United States Court of Appeals

for the Second Circuit

APPENDIX

76-4067

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 76-4067

ARTHUR LIPPER CORPORATION AND
ARTHUR LIPPER, III,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for Review of Orders of the
Securities and Exchange Commission

JOINT APPENDIX

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1/ This listing is included in lieu of a listing of the relevant docket entries as required by Rule 30(d) of the Federal Rules of Appellate Procedure.

2/ Items in this appendix are identified by the corresponding document number as shown in the certified listing appearing at pages 1-32.

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Document No. 4 -- Grant Exhibit B -- Letter from Grandefeld & Goodman by John J. Grandefeld to Mr. Norman Carney, Hertz, Neumark & Warner, dated February 10, 1967 336

Document No. 19 -- IOS Exhibit C -- Document captioned "A Periodic Report to the Exchange Community from G. Keith Funston," dated July 21, 1967 337-340

Document No. 26 -- IOS Exhibit I -- Letter from Robert W. Haack to Members and Allied Members, Re: Proposed Amendment to Article XV, dated October 10, 1968 (pages 1-3 only) 341-343

Document No. 28 -- IOS Exhibit L -- Letter from Robert W. Haack to Members and Allied Members, Re: Commissions-Reciprocal Arrangements, dated November 22, 1968 (with attachment) 344-347

Document No. 134 -- Division's Exhibit 36 -- Order for public proceedings, etc. in the Matter of IOS Ltd. (S.A.), etc., et al., dated February 3, 1966 348-367

Document No. 135 -- Division's Exhibit 37 -- Order accepting offer of settlement in the Matter of IOS Ltd. (S.A.), etc., et al., dated May 23, 1967 [Securities Exchange Act Release No. 8083] 368-377

Document No. 145 -- Division's Exhibit 47 -- Letter from Irving M. Pollack, Director, Division of Trading and Markets, to the presidents of the various national securities exchanges and the NASD, dated July 18, 1966 [attestation omitted] 378-382

Document No. 194 -- Division's Exhibit 78 --
Document captioned "Across the President's
Desk, A Periodic Report to the Exchange
Community from G. Keith Funston," dated
February 1, 1967 383-397

Document No. 286 -- Initial Decision of Hearing
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June 11, 1971 398-423

Document No. 358 -- Securities Exchange Act
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Document No. 364 -- Securities Exchange Act
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PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ARTHUR LIPPER CORPORATION, ARTHUR LIPPER III, Petitioners,	:	
v.	:	No. 76-4067
SECURITIES AND EXCHANGE COMMISSION, Respondent.	:	

CERTIFIED LIST OF ALL DOCUMENTS, TRANSCRIPTS OF TESTIMONY, EXHIBITS AND OTHER MATERIAL COMPRISING THE RECORD IN THE MATTER OF ARTHUR LIPPER CORPORATION, ET AL.

Pursuant to Section 25(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78y(a)(2), and as provided in 28 U.S.C. 2112 and Rule 17(b) of the Federal Rules of Appellate Procedure, the Securities and Exchange Commission certifies that the following list of transcripts of testimony, exhibits, documents and other material all as described in said list, comprise the record upon which the orders under review herein were entered:

I. OFFICIAL TRANSCRIPTS OF PROCEEDINGS BEFORE THE SECURITIES AND EXCHANGE COMMISSION, AND EXHIBITS 1/ INTRODUCED INTO EVIDENCE, IN THE MATTER OF ARTHUR LIPPER CORPORATION AND ARTHUR LIPPER III, ADMINISTRATIVE PROCEEDING FILE NO. 3-2156, AND IN THE MATTER OF IOS, LTD., (S.A.), ET AL., ADMINISTRATIVE PROCEEDING FILE NO. 3-2157 (consolidated).

1/ Unless otherwise indicated, all exhibits in the official record are copies, rather than originals, of the documents described.

Document No.	Description	Page No.
	A. Transcripts	
1	Official transcripts of proceedings before Chief Hearing Examiner Warren E. Blair on September 14, 15, 16, 17, 18, 21, 22, 23, 1970; November 9, 12, 1970; May 28, 1971; June 21, 22, 1971; July 8, 1971.	1-1588 2/
2	Official transcript of proceedings before Commissioners Hugh F. Owens, A. Sydney Herlong, Jr., and Philip A. Loomis, Jr., on August 28, 1972.	1589-1646
	B. Grant Exhibits	
3	Exhibit A. Letter from Grandefeld & Goodman by John J. Grandefeld to Mr. Norman Carney, Hertz, Neumark & Warner, dated January 25, 1967.	1647
4	Exhibit B. Letter from Grandefeld & Goodman by John J. Grandefeld to Mr. Norman Carney, Hertz, Neumark & Warner, dated February 10, 1967.	1648
5	Exhibit C. Letter from Norman F. Carney to Mr. Raymond Grant, dated March 31, 1967.	1649
6	Exhibit D. Letter from Norman Carney to Mr. Raymond Grant, dated April 6, 1967.	1650
7 3/	Exhibit E. Memorandum from Mr. Bernard Dishy, dated March 30, 1967.	1651-1652
	C. Lipper Exhibits	
8	Exhibit A. Page 40 of the transcript of the testimony of Edward Posner before the Securities & Exchange Commission on October 19, 1968.	1653
9	Exhibit B. Chart captioned "Arthur Lipper Corporation Mechanical Flow of Orders."	1654

2/ The transcript of proceedings on May 28, 1971, consists of pages 1-64 which are numbered as record pages 1168.1 through 1168.64 inclusive. In the reporter's original transcript, page 29 is followed by a single page numbered "30-40" which is, in turn, followed by page 41. Similarly, these three pages are numbered record pages 1168.29, 1168.30-.40 and 1168.41, respectively.

3/ Grant Exhibit E was admitted only as to the typewritten material therein.

Document No.	Description	Page No.
10	Exhibit C-1. Original letter from FOF Proprietary Funds Ltd. by Arthur M. Cowett to Arthur Lipper Corporation, dated June 29, 1967.	1655
11	Exhibit C-2. Original letter from IIT Management Company (S.A.) by Edward M. Cowett to Arthur Lipper Corporation, dated July 11, 1967.	1656
12	Exhibit C-3. Original letter from Edward M. Cowett to Arthur Lipper Corporation, dated July 11, 1967.	1657
13	Exhibit C-4. Original letter from Canadian Fund Management Company Ltd., by Edward M. Cowett to Arthur Lipper Cornoration.	1658
14	Exhibit C-5. Original letter from IIT Management Company (S.A.) by Edward M. Cowett to Arthur Lipper Corporation, dated March 15, 1968.	1659
15	Exhibit C-6. Original letter from FOF Proprietary Funds Ltd., by Edward M. Cowett to Arthur Lipper Corporation, dated March 15, 1968.	1660
16	Exhibit D. Letter from Allan F. Conwill to Solomon Freedman, Esq., dated March 31, 1969.	1661-1665
	D. IOS Exhibits	
17	Exhibit A. Document captioned "A Periodic Report to the Exchange Community from G. Keith Funston", dated May 4, 1967.	1666-1668
18	Exhibit B. Letter from Robert W. Haack to Members and Allied Members, Re: Commission Rate Structure Proposal, dated January 2, 1968.	1669-1671
19	Exhibit C. Document captioned "A Periodic Report to the Exchange Community from G. Keith Funston", dated July 21, 1967.	1672-1675
20	Exhibit D. Letter from Robert W. Haack to Members and Allied Members, Re: Proposed SEC Rule 10b-10, dated March 21, 1968.	1676-1688
21	Exhibit E. Letter from Robert W. Haack to Members and Allied Members, Re: SEC Investigative Hearings, etc., dated June 7, 1968.	1689-1692

Document No.	Description	Page No.
22	Exhibit F. Letter from Robert W. Haack to Members and Allied Members, Re: Board Decisions on Volume Discount, etc., dated June 27, 1968.	1693-1695
23	Exhibit G. Letter from Robert W. Haack to Members and Allied Members, Re: New Interim Commission Schedule, dated August 8, 1968 (with attachment).	1696-1703
24	Exhibit H. Letter from Robert W. Haack to Members and Allied Members, Re: Interim Commission Schedules, dated September 6, 1968.	1704-1708
25	Exhibit I. Letter from Robert W. Haack to Members and Allied Members, Re: Proposed Amendment to Article XV, dated October 10, 1968.	1709-1719
26	Exhibit J. New York Stock Exchange Member Firm Educational Circular No. 243, Re: Interpretation of Amended Article XV of the Constitution, dated October 14, 1968.	1720-1727
27	Exhibit K. Letter from Robert W. Haack to Members and Allied Members, Re: Approval of Interim Schedule, dated October 25, 1968.	1728-1732
28	Exhibit L. Letter from Robert W. Haack to Members and Allied Members, Re: Commissions-Reciprocal Arrangements, dated November 22, 1968 (with attachment).	1733-1736
29	Exhibit M. Biography of Irving J. Galpeer from Martindale-Hubbel.	1737
30 4/	Exhibit N. Fund of America, Inc. "Notice of Special Meeting of Stockholders to be Held September 3, 1965" and page 8 of accompanying proxy statement.	1738-1739
31	Exhibit O. Fund of America, Inc. Prospectus, dated October 5, 1965. (cover and page 4).	1740-1741
32	Exhibit P. Fund of America, Inc. "Notice of Annual Meeting to be Held October 17, 1966" and pages 6-7 of accompanying proxy statement.	1742-1744
33	Exhibit Q. Fund of America, Inc. Prospectus, dated November 1, 1966 (cover and page 3).	1745-1746

4/ Exhibits N and O were admitted as evidence of what was filed with the Commission, but not for the accuracy of assertions therein.

Document No.	Description	Page No.
34	Exhibit R. Letter from Irving J. Galpeer to the Directors of Fund of America, Inc., dated October 27, 1966.	1747
35	Exhibit S. Two-page excerpt from the minutes of the meeting of the Board of Directors of Fund of America, Inc., held February 20, 1967.	1748-1749
36	Exhibit T. Fund of America, Inc. "Notice of Special Meeting of Stockholders to be Held March 20, 1967" and page 6 of accompanying proxy statement.	1750-1751
37	Exhibit U. Fund of America, Inc. Prospectus, dated April 1, 1967 (cover and unnumbered internal page).	1752-1753
38	Exhibit V. Letter from Irving J. Galpeer to Fund of America, Inc., dated August 8, 1968.	1754
	E. Division's Exhibits	
39	Exhibit 1. Original worksheet captioned "Fund of America, Inc., Brokers Commissions in Portfolio Transactions, Year 1967".	1755
40	Exhibit 2. Fund of America, Inc. Prospectus, dated November 1, 1966.	1756-1779
41	Exhibit 3. Letter from Norman F. Carney to Investors Planning Corporation of America, 5/ dated April 13, 1967.	1780
42	Exhibit 4. Letter from Norman F. Carney to Investors Planning Corporation of America, dated May 2, 1967.	1781
43	Exhibit 5. Letter from Norman F. Carney to Investors Planning Corporation of America, dated June 1, 1967.	1782
44	Exhibit 6. Letter from Norman F. Carney to Investors Planning Corporation of America, undated but stamped "Paid, July 13, 1967".	1783
45	Exhibit 7. Letter from Norman F. Carney to Investors Planning Corporation of America, dated November 3, 1967.	1784
46	Exhibit 8. Letter from Norman F. Carney to Investors Planning Corporation of America, dated March 25, 1968.	1785

5/ Investors Planning Corporation of America is sometimes referred to as "IPC" herein.

Document No.	Description	Page No.
47	Exhibit 9-A. Chart captioned "Fund of America, Stages #1 and #2".	1786
48	Exhibit 9-B. Chart captioned "Fund of America, Stages #3 and #4".	1787
49	Exhibit 10-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated July 6, 1967.	1788
50	Exhibit 10-B. Letter from Kenneth Easton to IPC, dated July 6, 1967.	1789
51	Exhibit 10-C. Check payable to IPC drawn by Kenneth Easton, dated July 6, 1967.	1790
52	Exhibit 11-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated June 14, 1967.	1791
53	Exhibit 11-B. Letter from Kenneth Easton to IPC, dated June 14, 1967.	1792
54	Exhibit 11-C. Check payable to IPC drawn by Kenneth Easton, dated June 14, 1967.	1793
55	Exhibit 12-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated June 28, 1967.	1794
56	Exhibit 12-B. Letter from Kenneth Easton to IPC, dated June 28, 1967.	1795
57	Exhibit 12-C. Check payable to IPC, drawn by Kenneth Easton, dated June 29, 1967.	1796
58	Exhibit 13-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated August 18, 1967.	1797
59	Exhibit 13-B. Letter from Kenneth Easton to IPC, dated August 18, 1967.	1798
60	Exhibits 13-C. Check payable to IPC, drawn by Kenneth Easton, dated August 18, 1967.	1799
61	Exhibit 14-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated October 23, 1967.	1800
62	Exhibit 14-B. Letter from Kenneth Easton to IPC, dated October 23, 1967.	1801

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63	Exhibit 14-C. Check payable to IPC, drawn by Kenneth Easton, dated October 23, 1967.	1802
64	Exhibit 15-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated November 28, 1967.	1803
65	Exhibit 15-B. Letter from Kenneth Easton to IPC, dated November 28, 1967.	1804
66	Exhibit 15-C. Check payable to IPC drawn by Kenneth Easton, dated November 28, 1967.	1805
67	Exhibit 16-A. Memorandum from Bernard Dishy, Re: Commissions - Kenneth Easton, dated December 29, 1967.	1806
68	Exhibit 16-B. Letter from Kenneth Easton to IPC, dated December 29, 1967.	1807
69	Exhibit 16-C. Check payable to IPC, drawn by Kenneth Easton, dated December 29, 1967.	1808
70	Exhibit 17-A. Memorandum from Bernard Dishy, Re: Commissions - George Hiegel, dated August 18, 1967.	1809
71	Exhibit 17-B. Letter from George Hiegel to IPC, dated August 18, 1967.	1810
72	Exhibit 17-C. Check payable to IPC drawn by George Hiegel, dated August 18, 1967; deposit slip to the account of George Hiegel, dated August 18, 1967.	1811
73	Exhibit 18-A. Memorandum from Bernard Dishy, Re: Commissions - George Hiegel, dated September 14, 1967.	1812
74	Exhibit 18-B. Letter from George Hiegel to IPC, dated September 14, 1967.	1813
75	Exhibit 18-C. Check payable to IPC, drawn by George Hiegel, dated September 14, 1967; deposit slip to the account of George Hiegel, dated September 15, 1967.	1814
76	Exhibit 19-A. Memorandum from Bernard Dishy, Re: Commissions - George Hiegel, dated October 23, 1967.	1815
77	Exhibit 19-B. Letter from George Hiegel to IPC, dated October 23, 1967.	1816

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78	Exhibit 19-C. Check payable to IPC, drawn by George Hiegel, dated October 23, 1967; deposit slip to the account of George Hiegel, dated October 24, 1967.	1817
79	Exhibit 20-A. Memorandum from Bernard Dishy, Re: Commissions - George Hiegel, dated November 28, 1967.	1818
80	Exhibit 30-B. Letter from George Hiegel to IPC, dated November 28, 1967.	1819
81	Exhibit 20-C. Check payable to IPC, drawn by George Hiegel, dated November 28, 1967; deposit slip to the account of George Hiegel, dated November 28, 1967.	1820
82	Exhibit 21-A. Memorandum from Bernard Dishy, Re: Commissions - George Hiegel, dated December 27, 1967.	1821
83	Exhibit 21-B. Letter from George Hiegel to IPC, dated December 29, 1967.	1822
84	Exhibit 21-C. Check payable to IPC, drawn by George Hiegel, dated August 18, 1967; deposit slip to the account of George Hiegel, dated December 29, 1967.	1823
85	Exhibit 22-A. Letter from Bernard Dishy to IPC, dated February 23, 1968.	1824
86	Exhibit 22-B. Check payable to IPC, drawn by Bernard Dishy, dated February 23, 1968.	1825
87	Exhibit 22-C. Check payable to IPC, drawn by Bernard Dishy, dated February 23, 1968.	1826
88	Exhibit 23-A. Letter from Edward M. Cowett to Ladenburg, Thalmann & Company, dated October 9, 1967.	1827-1828
89	Exhibit 23-B. Letter from Sidney A. Rosner to Arthur Lipper III, dated September 19, 1967.	1829
90	Exhibit 23-C. Ladenburg, Thalmann & Co. sales confirmation slips, dated August 29, 1967.	1830-1831
91	Exhibit 23-D. Check payable to IPC, drawn by Ladenburg, Thalmann & Co., dated October 11, 1967.	1832
92	Exhibit 24. Letter from Edward M. Cowett to Herzfeld & Stern, dated June 15, 1967.	1833

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93	Exhibit 25. Letter from Herzfeld & Stern to IPC, dated June 21, 1967.	1834
94	Exhibit 26. Original check payable to IPC, drawn by Herzfeld & Stern, dated June 21, 1967.	1835
95	Exhibit 27. List of subsidiaries and affiliates captioned "Bernard Cornfeld".	1836-1841
96	Exhibits 28-A through 28-M. Thirteen letters from Arthur Lipper Corporation to IPC (transmitting checks), dated from July 10, 1967 through June 24, 1968.	1842-1854
97	Exhibit 28-N. Letter from IIT Management Company (S.A.) to Arthur Lipper Corporation, dated July 11, 1967.	1855
98	Exhibits 28-O and 28-P. Two letters from Arthur Lipper Corporation to IPC transmitting checks, dated August 5, 1968.	1856-1857
99	Exhibit 28-Q. Letter from Canadian Fund Management Company Ltd. to Arthur Lipper Corporation, dated March 15, 1968.	1858
100	Exhibit 28-R. Letter from IIT Management Company (S.A.) to Arthur Lipper Corporation, dated March 15, 1968.	1859
101	Exhibits 29-A and 29-B. Letters from FOF Proprietary Funds Ltd. to Arthur Lipper Corporation, dated June 29 and July 11, 1967, respectively.	1860-1861
102	Exhibits 29-C. Letter from FOF Proprietary Funds Ltd. to Glore Forgan, Wm. R. Staats, Inc., dated August 10, 1967.	1862
103	Exhibit 29-D. Letter to A. J. Jablonski & Co., dated August 11, 1967.	1863
104	Exhibit 29-E. Letter from IIT Management Company (S.A.) to A. J. Jablonski & CO., dated August 11, 1967.	1864
105	Exhibit 29-F. Letter from FOF Proprietary Funds Ltd. to A. J. Jablonski & Co., dated August 11, 1967.	1865
106	Exhibit 29-G. Letter from Fund of Funds, Ltd. 6/ to Ladenburg, Thalmann & Co., dated October 2, 1967.	1866

6/ Fund of Funds, Ltd. is sometimes referred to as "FOF" herein.

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107	Exhibit 29-H. Letter from FOF to Ladenburg, Thalmann & Co., dated October 9, 1967.	1867
108	Exhibit 39-I. Letter from FOF Proprietary Funds Ltd. to Arthur Lipper Corp., dated March 15, 1968.	1868
109	Exhibit 29-J. Letter from Canadian Fund Management Co. Ltd., to Adams & Peck, dated August 7, 1968.	1869
110	Exhibits 29-K. Letter from FOF Proprietary Funds Ltd. to Glore Forgan, Wm. R. Staats Inc., dated August 7, 1968.	1870
111	Exhibit 29-L. Letter from FOF Proprietary Funds Ltd., to Bear, Stearns & Co., dated August 7, 1968.	1871
112	Exhibit 29-M. Letter from FOF Proprietary Funds Ltd., to Emmanuel Deetjen & Co., dated August 7, 1968.	1872
113	Exhibit 29-N. Letter from FOF Proprietary Funds Ltd. to Jessup & Lamond, dated August 7, 1968.	1873
114	Exhibit 29-O. Letter from FOF Proprietary Funds Ltd. to Drexel, Harriman, Ripley, Inc., dated August 15, 1968.	1874
115	Exhibit 29-P. Letter from Investors Fonds to Drexel Harriman, Ripley, Inc., dated August 15, 1968.	1875
116	Exhibit 29-Q. Letter from FOF Proprietary Funds Ltd. to George Robinson & Co., dated August 15, 1968.	1876
117	Exhibit 29-R. Letter from Fonditalia Management Co. Ltd. to Drexel, Harriman, Ripley, Inc., dated August 16, 1968.	1877
118	Exhibit 30-A. Letter from Jefferies & Co. Inc., to Financial Institutions Growth Fund Inc., dated December 23, 1966.	1878
119	Exhibits 30-B through 30-J. Ten letters from Jefferies & Co. Inc., to IIT Management Co. (S.A.) transmitting checks, dated February 7 through December 26, 1967.	1879-1887

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120	Exhibits 31-A and 31-B. Letters from FOF Proprietary Funds Ltd. to Shields & Co., dated December 27 and 18, 1967, respectively.	1888-1889
121	Exhibits 31-C through 31-F. Four letters from Shields & Co. to various brokers transmitting checks, dated December 26, 1967 through January 22, 1968.	1890-1893
122	Exhibits 31-G. Letter from IIT Management Co. (S.A.) to Shields & CO., dated February 26, 1968.	1894
123	Exhibits 31-H. Letter from Shields & Co. to Hay, Fales, Pizzini & Co., dated March 12, 1968.	1895
124	Exhibit 31-I. Letter from FOF Proprietary Funds Ltd. to Baker, Weeks & Co., dated August 15, 1968.	1896
125	Exhibit 32-A. Letter from Edward M. Cowett to Herzfeld & Stern, dated June 15, 1967.	1897
126	Exhibit 32-B. Memorandum from Hy Feld to Edward M. Cowett, dated June 7, 1967.	1898
127	Exhibit 33-A. Document captioned "Advice" from IPC to Mr. Arthur Lipper, dated November 10, 1967.	1899
128	Exhibit 33-B. Letter from IPC to Arthur Lipper III, dated August 22, 1967.	1900
129	Exhibit 34-A. Letter from White, Weld & Co. to IPC, dated August 30, 1968.	1901
130	Exhibit 34-B. Letter from FOF Proprietary Funds Ltd. to White, Weld & Co., dated August 15, 1968.	1902
131	Exhibit 35-A. Document captioned "Advice" from IPC to Edward M. Cowett, Esq., dated August 5, 1968.	1903
132	Exhibit 35-B. Document captioned "Advice" from IPC to Edward M. Cowett, dated September 3, 1968.	1904
133	Exhibit 35-C. Letter from Drexel, Harriman, Ripley Inc., to IPC, dated September 10, 1968.	1905
134	Exhibit 36. Order for public proceedings, etc. in the Matter of IOS Ltd. (S.A.), etc., et al., dated February 3, 1966.	1906-1925

Document No.	Description	Page No.
135	Exhibit 37. Order accepting offer of settlement in the matter of IOS Ltd. (S.A.), etc., et al., dated May 23, 1967 [Securities Exchange Act Release No. 8083].	1926-1935
136	Exhibit 38. Fund of America, Inc. Prospectus, dated April 1, 1967.	1936-1957
137	Exhibit 39. Fund of America, Inc. Prospectus, dated April 1, 1968.	1958-2025
138	Exhibit 40. Letter from FOF Proprietary Funds Ltd. to Jefferies & Co., Inc., dated October 2, 1967.	2026
139	Exhibit 41. Letter from FOF Proprietary Funds Ltd. to Arthur Lipper Corporation, dated August 14, 1968.	2027
140	Exhibits 42-A and 42-B. Letters from FOF Proprietary Funds Ltd., to Bear, Stearns & Co., dated July 22 and August 7, 1968, respectively.	2028-2029
141	Exhibits 43-A through 43-C. Prespectuses of the Fund of Funds Inc., dated March 1, 1966, June 1, 1967, and May 4, 1968, respectively.	2030-2105
142	Exhibits 44-A through 44-C. Prospectuses of IIT, an International Investment Trust, 7/ dated June 1, 1966, December 1, 1967, and July 1, 1967, respectively.	2106-2165
143	Exhibits 45-A through 45-C. Prospectuses of Regent Fund Ltd., dated April 25, 1966, April 21, 1967, and April 21, 1968, respectively.	2166-2253
144	Exhibit 46. Prosapectus of IOS Regent Fund Ltd., dated April 21, 1969.	2254-2293
145	Exhibit 47. Original attestation of Charles A. Moore (with attachment), dated September 16, 1970.	2294-2299
146	Exhibit 48-A. Letter from FOF Proprietary Funds Ltd. to A. J. Jablonski & Co., dated August 11, 1967.	2300
147	Exhibit 48-B. Letter from IIT Management Company (S.A.) to A.J. Jablonski & Co., dated August 11, 1967.	2301

7/ IIT, an International Investment Trust, is sometimes referred to as "IIT" herein.

Document No.	Description	Page No.
148	Exhibit 49. Statement of the account of Arthur Lipper Corporation with A. J. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during July, 1967.	2302-2303
149	Exhibit 50. Statement of the account of Arthur Lipper Corporation with A. J. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during August, 1967; and checks payable to IPC drawn by A. J. Jablonski & Co., dated September 1 and 7, 1967.	2304-2307
150	Exhibit 51. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during September, 1967; and check payable to IPC drawn by A. I. Jablonski & Co., dated September 28, 1967.	2308-2311
151	Exhibit 52. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during October, 1967; and check payable to IPC drawn by A. I. Jablonski & Co., dated October 17, 1967.	2312-2314
152	Exhibit 53. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during November 1, 1967; and check payable to IPC drawn by A. I. Jablonski & Co., dated November 7, 1967.	2315-2317
153	Exhibit 54. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during December 1, 1967; and checks payable to IPC drawn by A. I. Jablonski & Co., dated December 11 and 22, 1967.	2318-2320
154	Exhibit 55. Statements of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Midwest Stock Exchange during August, September and November, 1967.	2321-2326
155	Exhibit 56. Letter from Arthur Lipper III to Mr. Robert Jablonski, dated January 22, 1968; and letter from Louis A. Tananbaum to Mr. A. R. Jablonski, dated April 4, 1968.	2327-2328

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156	Exhibit 57. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during January, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated February 8, 1968.	2329-2332
157	Exhibit 58. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during February, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated March 6, 1968.	2333-2355
158	Exhibit 59. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during February 26 through March 22, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated April 18, 1968.	2336-2338
159	Exhibit 60. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during March 25 through April 23, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated May 8, 1968.	2339-2342
160	Exhibit 61. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during May, 1968; similar statement reflecting over-the-counter transactions during May, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated June 7, 1968.	2343-2349
161	Exhibit 62. Statement of the account of Arthur Lipper Corporation with A.I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during May 24 through June 21, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated July 2, 1968.	2350-2353
162	Exhibit 63. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during June 24 through July 24, 1968; and check payable to Overseas Development Bank drawn A. I. Jablonski & Co., dated August 2, 1968.	2354-2357

Document No.	Description	Page No.
163	Exhibit 64. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions over-the-counter during June 24 through July 24, 1968; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated August 8, 1968.	2358-2360
164	Exhibit 65. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions on the Detroit Stock Exchange during July 25 through August 23, 1968; similar statement reflecting over-the-counter transactions during the same period; and check payable to Overseas Development Bank drawn by A. I. Jablonski, dated September 6, 1968.	2361-2365
165	Exhibit 66. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions over-the-counter during August 26 through September 23, 1968; similar statement reflecting transactions on the Detroit Stock Exchange during the same period; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated October 8, 1968.	2366-2371
166	Exhibit 67. Statement of the account of Arthur Lipper Corporation with A. I. Jablonski & Co. reflecting transactions over-the-counter during September 24 through October 24, 1968; similar statement reflecting transactions on the Detroit Stock Exchange during the same period; and check payable to Overseas Development Bank drawn by A. I. Jablonski & Co., dated November 8, 1968.	2372-2376
167	Exhibit 68-A. Letter from FOF Proprietary Funds Ltd. to A. I. Jablonski & Co., dated March 30, 1968.	2377
168	Exhibit 68-B. Letter from IIT Management Company S.A. to A. I. Jablonski & Co., dated March 30, 1968.	2378
169	Exhibit 69-A. Letter from C. Henry Buhl III, to Jefferies & Co., dated December 14, 1966.	2379
170	Exhibit 69-B. Letter from Jefferies & Co. to C. Henry Buhl III, dated December 23, 1966.	2380

Document No.	Description	Page No.
171	Exhibit 70-A. Letter from C. Henry Buhl III, to Jefferies & Co., dated December 16, 1966.	2381
172	Exhibit 70-B. Letter from Jefferies & Co., to IIT Management Company, dated January 10, 1967.	2382
173	Exhibit 71-A. Letter from Jefferies & Co., to Emmanuel Deetjen & Co., dated January 18, 1967.	2383
174	Exhibit 71-B. Letter from Jefferies & Co., to Computer Directions Fund Inc., dated February 16, 1967.	2383.1
175	Exhibit 71-C. Letter from Nancy Stuart to Jefferies & Co., dated April 17, 1967.	2384
176	Exhibit 71-D. Letter from Jefferies & Co., to Emmanuel Deetjen & Co., dated April 19, 1967.	2385
177	Exhibit 71-E. Letter from IIT Management Company to Jefferies & Co., dated July 12, 1967; and two letters from Jefferies & Co. to IIT Management Company, dated July 27 and 18, 1967, respectively.	2386-2388
178	Exhibit 71-F. Letter from Jefferies & Co. to Financial Institutions Management Co. Ltd., dated July 18, 1967.	2389
179	Exhibit 71-G. Letter from Jefferies & Co. to IIT Management Company (with enclosures), dated March 7, 1968.	2390-2395
180	Exhibit 71-H. Letter from Jefferies & Co. to IIT Management Company (with enclosures), dated March 19, 1968.	2396-2400
181	Exhibit 71-I. Letter from Jefferies & Co., to IIT Management Company (with enclosures), dated May 3, 1968.	2401-2404
182	Exhibit 72-A. Letter from IIT Management Company to Jefferies & Co., dated October 2, 1967.	2405
183	Exhibit 72-B. Letter from FOF Proprietary Funds Ltd. to Jefferies & Co., dated October 2, 1967.	2406
184	Exhibit 73-A through 73-F. Letters from Jefferies & Co. to IIT Management Company , dated October 3, 24, November 21, December 11, 20, and 26, 1967.	2407-2412

Document No.	Description	Page No.
185	Exhibit 74-A. Check payable to IPC drawn by Glore Forgan, Wm. R. Staats Inc., dated April 12, 1967.	2413-2414
186	Exhibit 74-B. Letter from FOF Proprietary Funds Ltd. to Glore Forgan, Wm. R. Staats Inc., dated August 10, 1967.	2415
187	Exhibits 74-C through 74-H. Checks payable to IPC drawn by Glore Forgan, Wm. R. Staats Inc., dated August 16, September 13, December 8, 1967, May 17, July 11, and August 15, 1968.	2416-2421
188	Exhibits 75-A through 75-L. Letter from Nancy L. Stuart to Securities & Exchange Commission, dated August 29, 1968; eleven accounting worksheets enclosed therewith.	2422-2432
189	Exhibit 76-A. Document captioned "Distribution Ledger, Account #537."	2433-2435
190	Exhibit 76-B. Document captioned "Distribution Ledger, Account #537.01."	2436
191	Exhibit 76-C. Document captioned "Distribution Ledger, Account #537.02."	2437-2439
192	Exhibit 77-A. Document captioned "Distribution Ledger, Account #121.01" [for 1967].	2440-2442
193	Exhibit 77-B. Document captioned "Distribution Ledger, Account #121.01" [for 1968].	2443-2445
194	Exhibit 78. Document captioned "Across the President's Desk, A Periodic Report to the Exchange Community from G. Keith Funston," dated February 1, 1967.	2446-2460
195	Exhibits 79-A and 79-B. Two-page document captioned "Schedule of Arthur Lipper Corporation Checks to Investors Planning Corporation."	2461-2462
196	Exhibits 79-C through 79-K. Checks payable to IPC drawn by Arthur Lipper Corporation, bearing various dates in 1967 and 1968.	2463-2479
197	Exhibit 80-A. Document captioned "Schedule of Give-Up Letters Transmitted to IPC by Arthur Lipper Corporation."	2480-2481

Document No.	Description	Page No.
198	Exhibits 80-B through 80-EE. Thirty letters from Arthur Lipper Corporation to IPC bearing various dates in 1967 and 1968.	2482-2511
199	Exhibits 81-A and 81-B. Letter from Arthur Lipper Corporation to IPC (with enclosure), dated August 28, 1968.	2512 2513
200	Exhibit 82. Document captioned "ALC OTC Give-Ups to IPC."	2514
201	Exhibit 83. Document captioned "Gross Commissions - OTC Transactions, IOS Rebated Accounts - April 1967 - August 1968."	2515
202	Exhibit 84. Document captioned "Reciprocal and Directed Income Received by Investors Planning Corporation from January 1, 1967 through December 31, 1967.	2516
203	Exhibit 85. Document captioned "Reciprocal and Directed Income Received by Investors Planning Corporation from January 1 through August 31, 1968."	2517
204	Exhibits 86-A through 86-C. Letter from Irving J. Galpeer to Mr. Alan Mostoff (with enclosures), dated August 8, 1968.	2518-2520
205	Exhibit 86-D. Letter from Clare Pipolo to Fund of America, dated August 8, 1968; check payable to Fund of America drawn by IPC, dated August 8, 1967; and memorandum from Max Gartner to Mr. Gil Loserdo, dated August 12, 1968.	2521
206	Exhibit 87. Worksheet captioned "1966 Cash Receipts IPC."	2522
207	Exhibit 88. Letter from John A. Dudley to Irving Galpeer, Esquire, dated August 6, 1965.	2523-2524
208	Exhibits 89-A and 89-B. Letter from Richard M. Phillips to the Honorable Warren E. Blair (with enclosures), dated July 1, 1971.	2525-2527
209	Exhibit 90. Complaint for Injunction in Securities and Exchange Commission v. IOS, Ltd. (S.A.), et al., Civil Action No. 69-3594 (S.D.N.Y., 1962); accompanied by an original certificate executed by the Clerk of the United States District Court for the Southern District of New York.	2528-2536

Document No.	Description	Page No.
210	Exhibit 91. IOS sales brochure	2537-2575
	III. PLEADINGS, MOTIONS AND OTHER PAPERS FILED IN THE PROCEEDING 8/	
211	Order for public proceedings and notice of hearing pursuant to Sections 15(b), 15A and 19(a)(3) of the Securities Exchange Act of 1934 In the Matter of Arthur Lipper Corporation and Arthur Lipper III, dated September 18, 1969.	2576-2579
212	Letter from Orval L. DuBois to Arthur Lipper Corporation, dated September 18, 1969.	2580
213	Letter from Orval L. DuBois to Arthur Lipper III, dated September 18, 1968.	2581
214	Motion to withdraw order and dismiss proceedings and answer, dated October 7, 1969.	2582-2595
215	Order designating hearing examiner, dated October 10, 1969.	2596
216	Answer in opposition to motion to withdraw order and dismiss proceedings, dated October 13, 1969.	2597-2598
217	Request for hearing examiner to rule on motion to dismiss in favor of respondents, dated October 16, 1969.	2599-2603
218	Memorandum in opposition to request for hearing examiner to rule on motion to dismiss, dated October 21, 1969.	2604-2608
219	Order designating substitute hearing officer, dated November 14, 1969.	2609
220	Order denying motion to dismiss, dated November 21, 1969.	2610-2612
221	Request for hearing examiner to certify ruling for interlocutory review by Commission pursuant to Rule 12(a), dated November 26, 1969.	2613-2622

8/ Certificates of service, affidavits of mailing, transmittal letters, and other attachments accompanying various of the documents herein are included in the record and paginated, but have not been separately described in this listing.

Document No.	Description	Page No.
222	Memorandum in opposition to request for hearing examiner to certify ruling for interlocutory review by Commission, dated December 1, 1969.	2623-2627
223	Order denying request for certification of ruling, dated December 1, 1969.	2628
224	Application to Commission for review of hearing officer's denial of request for certification of ruling pursuant to Rule 12(a), dated December 8, 1969.	2629-2658
225	Memorandum in opposition to application to Commission for review of hearings examiner's denial of request for certification of ruling, dated December 15, 1969.	2659-2671
226	Order denying interlocutory reeview, dated January 22, 1970.	2672-2674
227	Motion to consolidate proceedings and schedule hearing date, dated June 3, 1970.	2675-2677
228	Opposition to motion to consolidate proceedings and favoring scheduling hearings, dated June 10, 1970.	2678-2681
229	Telegram to Orval L. DuBois from Seymour Kleinman, dated June 10, 1970.	2682
230	Extension order, dated June 10, 1970.	2683
231	Letter from Robert M. Laprade to Allan F. Conwill, dated June 13, 1970; and same letter addressed to Seymour Kleinman, Esquire (enclosures omitted).	2684-2689
232	Order [granting motion to consolidate proceedings], dated July 7, 1970.	2690-2692
233	Letter from Richard M. Phillips to the Honorable Warren Blair, dated July 17, 1970.	2693-2694
234	Order postponing hearing, dated July 17, 1970.	2695
235	Letter from Joseph B. Russell to Orval L. DuBois, dated August 13, 1970.	2696
236	Motion of the Division of Trading and Markets to postpone hearing date from September 14 to October 5, 1970, dated August 24, 1970.	2697-2698

Document No.	Description	Page No.
237	Reply of Arthur Lipper Corporation and Arthur Lipper III to motion of Division of Trading and Markets to postpone hearing from September 14 to October 5, 1970, dated August 31, 1970.	2699-2709
238	Order denying postponement of hearing, dated September 1, 1970	2710-2711
239	Response of the Division fo Trading and Markets to August 31, 1970, reply of Arthur Lipper Corporation and Arthur Lipper III, dated September 1, 1970.	2712-2715
240	Notice of appearance [Sullivan & Worcester], dated September 1, 1970.	2716-2717
241	Letter from Richard M. Phillips to the Honorable Warren E. Blair, dated September 19, 1970.	2718
242	Telegram from Seymour Kleinman to Warren E. Blair, dated September 11, 1970.	2719-2720
243	Motion to postpone resumption of the hearing from October 5 to October 12, 1970, dated October 1, 1970.	2721-2723
244	Order postponing resumption of hearing, dated October 2, 1970.	2724
245	Motion to postpone resumption of the hearing from October 12 to October 26, 1970, dated October 9, 1970.	2725
246	Order postponing resumption of hearing, dated October 9, 1970.	2726
247	Notice of appearance [Steptoe & Johnson], dated October 22, 1970.	2727
248	Motion for continuance, dated October 23, 1970.	2728-2729
249	Order postponing resumption of hearing, dated October 23, 1970.	2730
250	Notice of appearance [Beatrice M. Mattison], dated October 30, 1970.	2731
251	Memorandum from Warren E. Blair, Chief Hearing Examiner, to Records and Service Officer, listing certain public documents and files of which the hearing examiner took official notice, dated November 16, 1970.	2732

Document No.	Description	Page No.
252	Motion for extension of time to submit findings, conclusions, and brief from December 7 to December 14, 1970, dated December 4, 1970.	2733-2734
253	Order granting extension, dated December 4, 1970.	2735
254	Motion to extent time for Division of Trading and Markets to file its findings of fact, conclusions of law and brief in support thereof from December 14 to December 21, 1970, dated December 11, 1970.	2736-2737
255	Order granting extension, dated December 11, 1970.	2738
256	Motion to extend time for Division of Trading and Markets to file its findings of fact, conclusions of law and brief in support thereof from December 21 to December 28, 1970, dated December 21, 1970.	2739-2740
257	Order granting extension, dated December 21, 1970.	2741
258	Supplemental motion to extend time for Division of Trading and Markets to file its findings of fact, conclusions of law and brief in support thereof from December 21, 1970, to January 11, 1971, dated December 22, 1970.	2742-2744
259	Motion to extend time for Division of Trading and Markets to file its findings of fact, conclusions of law and brief in support thereof from January 11 to January 15, 1971, dated January 11, 1971.	2745-2746
260	Order granting extension, dated January 11, 1971.	2747
261	Proposed findings of fact, conclusions of law and brief in support thereof as to Arthur Lipper Corporation and Arthur Lipper III (with exhibit), dated January 18, 1971.	2748-2841
262	Explanation of filing and errata (with exhibit), dated January 25, 1971.	2842-2860
263	Motion for extension of time to submit findings, conclusions, and brief from February 22 to March 1, 1971, dated February 17, 1971.	2861-2862

Document No.	Description	Page No.
264	Order granting extension, dated February 19, 1971.	2863
265	Securities Exchange Act Release No. 9094, dated March 1, 1971 [Findings and order imposing remedial sanctions as to respondents Cornfeld, Cowett, Grant and Sutner].	2864-2866
266	Letter from John A. Dudley to Warren E. Blair, dated March 1, 1971.	2867
267	Proposed findings of fact and conclusions of law of respondents Arthur Lipper Corporation and Arthur Lipper III, dated March 1, 1971.	2868-2912
268	Brief of respondents Arthur Lipper Corporation and Arthur Lipper III, dated March 1, 1971.	2913-2987
269	Motion to reopen proceedings as to the captioned respondents [IOS and IPC], dated March 10, 1971.	2988-2991
270	Motion that the time for the Division of Trading and Markets to file its reply brief be extended from March 15 to March 22, 1971, dated March 12, 1971.	2992-2993
271	Order granting extension, dated March 15, 1971.	2994
272	Order reopening hearing, dated March 18, 1971.	2995
273	Motion that the time for the Division of Trading and Markets to file its reply brief be extended from March 22 to April 5, 1971, dated March 22, 1971.	2996-2997
274	Order granting extension, dated March 22, 1971.	2998
275	Motion that the time for the Division of Trading and Markets to file its reply brief be extended from April 5 to May 5, 1971, dated March 31, 1971.	2999
276	Order granting extension, dated April 2, 1971.	3000
277	Motion to postpone reopening of hearing as to IOS and Investors Planning Corporation of America respondents from May 19 to June 7, 1971, dated April 13, 1971.	3001-3002
278	Order postponing hearing, dated April 14, 1971.	3003

Document No.	Description	Page No.
279	Brief of the Division of Trading and Markets in reply to brief of Arthur Lipper Corporation and Arthur Lipper III, dated May 5, 1971.	3004-3042
280	Response of the Division of Trading and Markets to request of the Lipper respondents for oral argument before the Chief Hearing Officer, dated May 10, 1971.	3043-3044
281	Order scheduling oral argument, dated May 10, 1971.	3045
282	Motion to postpone oral argument at 1:30 PM from May 24 to May 28, 1971, dated May 17, 1971.	3046
283	Order postponing oral argument, dated May 18, 1971.	3047
284	Motion to postpone reopening of hearing from June 8 to June 21, 1971, dated May 28, 1971.	3048-3049
285	Order postponing hearing, dated June 1, 1971.	3050
286	Initial decision of hearing examiner [as to Lipper respondents], dated June 11, 1971.	3051-3078
287	Petition for review, dated June 16, 1971.	3079-3081
288	Division of Trading and Markets: (1) response to the Lipper, et al., respondents' petition to review filed on June 17, 1971; and (2) petition to review sanctions imposed on the Lipper, et al., respondents, dated June 25, 1971.	3082-3085
289	Motion for withdrawal of approval of the Division's request of issuance of subpoenas, dated June 28, 1971.	3086-3094
290	Motion to quash subpoenas, dated June 30, 1971.	3095-3097
291	Order granting review of initial decision, dated June 30, 1971.	3098-3099
292	Response of Division of Trading and Markets to Arthur Lipper's June 30, 1971, motion to quash subpoena, dated July 6, 1971.	3100-3102
293	Response of the Division of Trading and Markets to June 28, 1971 motion of responsents IOS, Ltd. and IPC for withdrawal of approval of the Division's request for issuance of subpoenas, dated July 6, 1971.	3103-3117

Document No.	Description	Page No.
294	Response of the Division of Trading and Markets to Robert L. Vesco's motion to quash, dated July 6, 1971.	3118-3120
295	Division of Trading and Markets' request for an extension until October 4, 1971, for filing its brief in support of its petition for review, dated July 15, 1971.	3121-3122
296	Motion for extension of time to file briefs, dated July 14, 1971.	3123
297	Letter from Robert M. Goolrick, to Honorable Warren E. Blair (with enclosure), dated July 15, 1971.	3124-3125
298	Extension order, dated July 16, 1971.	3126
299	Order accepting letter for record, dated August 11, 1971, with attached letter from Floyd E. Brandow, Jr., to Calvin H. Cobb, Jr., Esq., dated July 12, 1971.	3127-3128
300	Motion that the time for Division of Trading and Markets to file its proposed findings of fact, conclusions of law and brief in support thereof be extended from August 23 to August 30, 1971, dated August 20, 1971.	3129-3130
301	Order granting extension of time for filing documents, dated August 23, 1971.	3131
302	Motion that the time for Division of Trading and Markets to file its proposed findings of fact, conclusions of law and brief in support thereof be extended from August 31 to September 3, 1971, dated August 30, 1971.	3132-3133
303	Order granting extension, dated August 31, 1971.	3134
304	Proposed findings of fact, conclusions of law and brief in support thereof of the Division of Trading and Markets [in the matter of IOS Ltd. and IPC], dated August 30, 1971.	3135-3230
305	Motion to extend time for filing of the Division's brief, dated September 16, 1971.	3231-3233

Document No.	Description	Page No.
306	Extension order, dated September 24, 1971.	3234
307	Motion that the time for respondents, IOS Ltd. and Investors Planning Corporation of America to file their proposed findings of fact, conclusions of law and brief in support thereof be extended from October 22, 1971 to November 12, 1971, undated.	3235-3236
308	Motion to extend time for filing of the Division's brief, dated October 15, 1971.	3237-3238
309	Order granting extension, dated October 15, 1971.	3239
310	Brief of the petitioners Arthur Lipper Corporation and Arthur Lipper III, dated October 18, 1971.	3240-3280
311	Brief of the Division of Trading and Markets in support of its petition that revocation of Arthur Lipper Corporation and barring of Arthur Lipper III are the sanctions warranted in these proceedings, dated October 22, 1971.	3281-3329
312	Motion that the time for respondents, IOS Ltd. and Investors Planning Corporation of America to file their proposed findings of fact, conclusions of law and brief in support thereof be extended from November 12 to November 26, 1971, dated November 10, 1971.	3330-3331
313	Extension order, dated November 17, 1971.	3332
314	Errata to Division's October 22, 1971, brief, dated November 18, 1971.	3333-3335
315	Brief of Division of Trading and Markets in support of its petition that revocation of Arthur Lipper Corporation and barring of Arthur Lipper III are the sanctions warranted in these proceedings, dated October 22, 1971.	3336-3382
316	Application to hearing examiner for (1) extension of the time for filing respondents' proposed findings of fact, conclusions of law, and brief, and (2) waiver of the sixty page limitation for respondents' brief, dated November 24, 1971.	3383-3385
317	Brief of the Division of Trading and Markets in reply to brief of Arthur Lipper Corporation and Arthur Lipper III, dated November 24, 1971.	3386-3409

Document No.	Description	Page No.
318	Reply brief of the petitioners Arthur Lipper Corporation and Arthur Lipper III, dated November 24, 1971.	3410-3445
319	Order granting extension and permitting brief in excess of sixty pages, dated November 26, 1971.	3446
320	Motion for oral argument by petitioners Arthur Lipper Corporation and Arthur Lipper III, dated November 29, 1971.	3447-3449
321	Proposed findings of fact, conclusions of law and brief in support thereof of the respondents IOS, Ltd. (S.A.) and Investors Planning Corporation of America, dated December 1, 1971.	3450-3631
322	Division's response to the Lipper respondents' motion for oral argument, dated December 3, 1971.	3632-3633
323	Request of Division of Trading and Markets that the time for filing its reply brief be extended from December 20, 1971, to January 28, 1972, dated December 6, 1971.	3634-3636
324	Order granting extension, dated December 8, 1971.	3637
325	Minute order [granting request for oral argument, but deferring the scheduling of such argument], dated January 13, 1972.	3638
326	Motion to reconsider order deferring scheduling oral argument, dated January 20, 1972.	3639-3644
327	Response to Division of Trading and Markets in opposition to January 20, 1972 motion of Lipper respondents seeking to have Commission reconsider its January 13, 1972 ruling deferring oral argument, dated January 25, 1972.	3645-3650
328	Request of Division of Trading and Markets that the time for filing its reply brief be extended from January 28 to February 7, 1972, dated January 28, 1972.	3651-3652
329	Order granting extension, dated January 28, 1972.	3653
330	Request of Division of Trading and Markets that the time for filing its reply brief be extended from February 7 to February 14, 1972, dated February 7, 1972.	3654-3655

Document No.	Description	Page No.
331	Order grantind extension, dated February 7, 1972.	3656
332	Letter from Calvin H. Cobb to Warren E. Blair, dated February 7, 1972.	3657
333	Request of Division of Trading and Markets that the time for filing its reply brief be extended from February 14 to February 18, 1972, dated February 14, 1972.	3658-3659
334	Order grantind extension, dated February 14, 1972.	3660
335	Request of Division of Trading and Markets that the time for filing its reply brief be extended from February 18 to February 23, 1972, dated February 18, 1972.	3661-3662
336	Order granting extension, dated February 18, 1972.	3663
337	Division's response to respondents' February 7, 1972 request for oral argument, dated February 25, 1972.	3664-3665
338	Response of Division of Trading and Markets to the proposed findings of fact, conclusions of law and brief in support thereof of IOS and IPC, dated February 24, 1972.	3666-3735
339	Order denying request for oral argument, dated March 1, 1972.	3736
340	Initial decision [In the matter of IOS, Ltd. (S.A.) and Investors Planning Corporation of America], dated March 14, 1972.	3737-3778
341	Initial decision errata, dated March 16, 1972.	3779
342	Order denying reconsideration, dated March 12, 1972.	3780-3781
343	Petition for review by Commission of initial decision, dated March 28, 1972.	3782-3787
344	Response of Division of Trading and Markets to petition of IOS and Investors Planning Corporation of America for review of the hearing examiner's initial decision, dated March 31, 1972.	3788-3789.1
345	Reply of respondents to Division's request to omit further briefing, dated April 7, 1972.	3790-3792

Document No.	Description	Page No.
346	Order granting review of initial decision, dated April 10, 1972.	3793-3794
347	Letter from Calvin H. Cobb to Ronald F. Hunt, dated April 14, 1972.	3795
348	Motion that the time for respondents IOS, Ltd. and Investors Planning Corporation of America to file their brief to the Commission be extended from May 12 to May 26,1972, dated May 10, 1972.	3796-3797
349	Extension order, dated May 11, 1972.	3798
350	Supplemental brief of respondents IOS, Ltd. (S.A.) and Investors Planning Corporation of America, dated dated May 19, 1972.	3799-3829
351	Response of the Division of Trading and Markets to the May 19, 1972 supplemental brief of the IOS et al. respondents, dated June 20, 1972.	3830-3831
352	Order scheduling oral argument, dated June 28, 1972.	3832
353	Telegram from Allan F. Conwill to Ronald F. Hunt, dated June 30, 1972.	3833
354	Order rescheduling oral argument, dated July 10, 1972.	3834
355	Notice of withdrawal from registration as broker--dealer [of Arthur Lipper Corporation], dated June 15, 1972, with attachments.	3835-3840
356	Order accepting letter for record, dated August 11, 1972, with attached letter from Floyd E. Brandow, Jr., to Calvin H. Cobb, dated July 12, 1972.	3841-3842
357	Order rescheduling oral argument, dated August 21, 1972.	3843
358	Securities Exchange Act Release No. 11773 (October 24, 1975) [order and opinion of the Commission in the matters of Arthur Lipper Corporation, Arthur Lipper III, IOS Ltd. (S.A.), and Investors Planning Corporation of America]. 9/	3844-3872

9/ Document No. 358, which is part of the Commission's file in the administrative proceeding herein, is one of the orders of which petitioners are seeking review.

Document No.	Description	Page No.
359	Motion for extension of time within which to petition for rehearing by the Commission, dated November 7, 1975 [by Arthur Lipper III and Arthur Lipper Corporation].	3873-3874
360	Petition for rehearing, dated November 24, 1975.	3875-3881
361	Motion for extension of time within which to file opposition to petition for rehearing by the Commission, dated November 26, 1975.	3882-3883
362	Extension order, dated December 2', 1975.	3884
363	Brief of the Division of Enforcement in opposition to petition for rehearing, dated December 11, 1975.	3885-3905
364	Securities Exchange Act Release No. 11980 (January 6, 1976) [memorandum opinion and order denying petition for rehearing]. 10/	3906-3908
	IV. PLEADINGS, MOTIONS, AND OTHER PAPERS FILED IN THE MATTER OF IOS, LTD. (S.A.), ET AL., ADMINISTRATIVE PROCEEDING FILE NO. 3-2157, PRIOR TO ITS CONSOLIDATION WITH IN THE MATTER OF ARTHUR LIPPER AND ARTHUR LIPPER III, ADMINISTRATIVE PROCEEDING FILE NO. 3-2156.	
365	Order for public proceedings and notice of hearing pursuant to Section 15(b) and 15A of the Securities Exchange Act of 1934 In the Matter of IOS Ltd. (S.A.), Bernard Cornfeld, Edward Cowett, Investors Planning Corporation of America, Raymond Grant, and Robert F. Sutner, dated September 18, 1969.	3909-3916
366	Six letters from Orval L. DuBois transmitting copies of the order instituting proceedings In the Matter of IOS Ltd., et al., to each of the six respondents named therein.	3917-3922
367	Letter from Robert J. Haft to Orval DuBois dated October 8, 1969.	3923

10/ Document No. 364, which is a part of the Commission's file in the administrative proceeding herein, is one of the orders of which petitioners are seeking review.

Document No.	Description	Page No.
368	Extension order, dated October 10, 1969.	3924
369	Answer of respondents, dated October 17, 1969.	3925-3932
370-	Motion to consolidate proceedings and schedule hearing date, dated June 3, 1970.	3933-3935
371	Opposition to motion to consolidate proceedings and favoring scheduling of hearing date, dated June 10, 1970.	3936-3938
372	Telegram from Seymour Kleinman to Orval L. DuBois, dated June 10, 1970.	3939
373	Extension order, dated June 10, 1970.	3940
374	Letter from Robert M. Laprade to Seymour Kleinman, dated June 13, 1970; and same letter to Allan F. Conwill.	3941-3946
375	Opposition to motion to consolidate proceedings, dated June 23, 1970.	3947-3951
376	Letter from Irving J. Galpeer to Securities and Exchange Commission, dated June 23, 1970.	3952-3953
377	Division of Trading and Markets reply to respondents' June 10, and June 23, 1970 responses opposing the Division June 3, 1970 motion to consolidate hearings, dated June 26, 1970.	3954-3959
378	Letter from Seymour Kleinman to Securities and Exchange Commission, dated July 2, 1970.	3960-3961
379	Notice of appearance [of Richard M. Phillips and Harlan L. Weiss], dated July 6, 1970.	3962
380	Order [granting motion to consolidate proceedings], dated July 9, 1970.	3963-3965
381	Notice of appearance [of Richard M. Phillips and Harlan L. Weiss], dated July 28, 1970.	3966
382	Notice of appearance [of Beatrice M. Mattison], dated October 30, 1970.	3967

For the Commission (pursuant to delegated authority). 11/

DATED: April 22, 1976

/s/

George A. Fitzsimmons
Secretary

11/ See 17 C.F.R. 200.30-7(a)(6).

for Fund of America?

A Yes.

Q Now, you testified that you had, during the months of May and June and July of 1969, found other more profitable ways of using the over the counter brokerage commissions that your firm was able to generate.

Would you tell us why that other business was more profitable?

A Well, on executions, it could be exchanged at a better ratio in that I would perhaps pay 40 or 45 per cent for the business.

And further to this, I was using it to buy some give-up checks which, of course, more profitable.

The overall concept in the firm was to balance off executions; in other words, where we could execute for more funds each month in the hopes that we would develop a block placement business.

So that it was of prime importance to our firm to get further introductions to other mutual funds.

Q Now, in Grant's Exhibits C and D, you advised Mr. Grant that it was the practice of Hertz, Newmark to charge, without deviation, a stock exchange commission on all over the counter transactions; is that correct?

A That's correct.

Q What was your impression of the practice in the

industry, at that time, with respect to charges on over the counter transactions by exchange members?

A That was the general, accepted practice.

HEARING EXAMINER BLAIR: What was that?

THE WITNESS: Charging New York Stock Exchange minimum commissions on over the counter transactions.

MR. PHILLIPS: I have no further questions.

HEARING EXAMINER BLAIR: Mr. Dudley?

MR. DUDLEY: No questions.

MR. LA PRADE: May I have a minute consultation with my co-counsel before I go ahead?

HEARING EXAMINER BLAIR: Yes.

However, before that I would like a little further clarification with respect to this ratio.

Do I understand that the ratio fixed on reciprocal business is a matter of negotiation?

THE WITNESS: Yes.

HEARING EXAMINER BLAIR: And what ranges exist as a customary practice?

THE WITNESS: Well, for the smaller orders, three, four hundred shares, you might reciprocate to the extent of 30, 35 or 40 per cent.

For the large blocks, you would be reciprocating in the 40 to 50 per cent range. The reason the block was more attractive, is that it gave you an opportunity to

Q Yes.

Do you know Mr. Cowett?

A Yes, quite well.

Q Did you have any discussions with Mr. Cowett concerning this transaction?

HEARING EXAMINER BLAIR: "This transaction" being?

MR.ANTHONY: The Anchor Corporation transaction.

HEARING EXAMINER BLAIR: All right.

A I recall that I discussed the price with him. Yes, we negotiated the price and whether the limit would be raised or lowered, yes.

Q And did you discuss the commission?

A No.

Our firm, as a rule, to the best of my knowledge, in fact, never negotiates over the counter commissions. We charge standard New York Stock Exchange commission on over-the-counter trades.

Q With reference to this give-up, how did that come about?

A I received a letter one day. Therefore, I was obligated to act upon it.

Q Why were you obligated?

A Well, at the time customers' directed give-ups

were legal. As you know, the law has been changed subsequently.

To the best of my knowledge, if a customer told you to give up on your commissions, you did so.

Q Did --

A My firm also obviously took the same attitude because no questions were asked.

Based upon this letter, we gave up on the commission.

Q It was voluntary?

A That we gave up?

Q Yes.

A No, we didn't give commissions away voluntarily. We received a letter of instruction.

Q This was --

HEARING EXAMINER BLAIR: Well, what is of interest to this hearing is whether you are testifying that it was a matter of practice for you and your firm during the time period in which Division's Exhibit 24 was received, to, without question, follow a customer's direction without having any previous knowledge of a customer's directed give-up?

THE WITNESS: I can only speak for the branch.

HEARING EXAMINER BLAIR: Yes.

THE WITNESS: If we were instructed to give up, we did.

A I don't recall.

Q Now, in 1965, did Mr. Lipper become affiliated in some manner with an IOS affiliated fund?

A In 1965?

Q Right.

A The Fund of Funds Sterling, Ltd, which invested in and invests in U.K. securities primarily, is the only fund with which Mr. Lipper might have had a connection.

My hesitancy in answering this question is I do not recall whether the Fund of Funds Sterling was organized in 1965 or in 1966, but Mr. Lipper was a director of the Fund of Funds Sterling.

Q Have you ever heard of the Financial Investors Growth Fund?

A Yes.

Financial Investors Growth Fund--

HEARING EXAMINER BLAIR: One moment.

I don't know what Mr. La Prade wants to elicit in that regard.

You do know of it?

THE WITNESS: Yes.

HEARING EXAMINER BLAIR: All right.

BY MR. LA PRADE:

Q And do you know who owned the outstanding shares of Financial Investors Growth Fund?

A Yes.

Financial Investors Growth Fund was a registered investment company under the 1940 Act.

HEARING EXAMINER BLAIR: Mr. Cowett, just respond directly to the question.

THE WITNESS: I am.

HEARING EXAMINER BLAIR: Read the question.

(Record read.)

HEARING EXAMINER BLAIR: That is the end of it.

THE WITNESS: Okay.

BY MR. LA PRADE:

Q And would you tell us who owned these shares?

A The shares were owned by FOF Proprietary Funds, Ltd.

Q Now, do you know what connection Mr. Lipper had with the Financial Investors Growth Fund?

A Mr. Lipper was a director of that entity.

Q Did he have any official position in that entity?

A I don't recall whether he was an officer or not.

Q Do you know if he was the president of Financial Investors?

A I don't recall specifically.

Q Okay.

MR. LA PRADE: We have the files. Mr. Anthony will bring them up. Then I will ask the Hearing Examiner to take official notice of the Commission filing with respect to Financial Investors Growth, which shows that Mr. Lipper was the president for a short period of time in 1966.

HEARING EXAMINER BLAIR: Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

BY MR. LA PRADE:

Q Now, did there come a time when the Commission instituted an administrative proceeding against IOS?

A In February of 1966.

Q Did --

A Well,-- yes, February of 1966.

MR. LA PRADE: At this time, I would ask the Hearing Examiner to take official notice of three Commission files bearing the numbers 811-1368-1, 811-1368-2A, and 811-1368-2.

These are the other filings with the Commission with respect to Financial Institutions Growth Fund, Inc.

MR. KLEINMAN: Can the record be corrected, then, to show, Mr. La Prade, your reference then to Financial Investors Growth Fund be modified to the correct name?

MR. LA PRADE: Right.

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Commission?

MR. KLEINMAN: Once again, your Honor, I have to rise to the same objection.

HEARING EXAMINER BLAIR: Sustained.

Let's get into what Mr. Cowett did or said after the order was issued.

MR. LA PRADE: All right. Fine.

BY MR. LA PRADE:

Q Now, in 1966, late 1966, did you have any discussions with Mr. Lipper concerning Mr. Lipper setting up his own brokerage firm?

A In 1966?

Q Right.

A I don't believe so.

Q How about in 1967?

A Yes.

Q And when did those take place?

A In probably February or March of 1967.

Q Now, with whom did you have these discussions?

A Mr. Lipper.

Q And what was the substance of these discussions?

A Well, as contemplated, the settlement order would necessitate a rather radical series of departures in the way in which brokerage had been handled-- over the way in which brokerage had been handled in the past.

The placement of orders required a rather artificial but exact series of procedures to be followed. And to follow those procedures, a rather elaborate communications network was involved.

I spoke to Mr. Lipper about the possibility of Zuckerman, Smith establishing such a network. Mr. Lipper reported to me in due course that the other partners of Zuckerman Smith were not in favor of putting in the capital expenditures and commitments of both time and money that would be required to do this but that he himself would be willing to do so on behalf of a new member firm that he might establish.

And that was the substance of the conversations.

Q Now, did you --

HEARING EXAMINER BLAIR: I don't understand what the substance was with respect to what you were requesting to be set up.

You mentioned a system of some kind.

Would you explain in some detail what you told him?

THE WITNESS: In the settlement negotiations --

HEARING EXAMINER BLAIR: Well, tell me what you told him. I just want the conversation.

THE WITNESS: I have to tell it the way I have to.

HEARING EXAMINER BLAIR: All right.

THE WITNESS: In the settlement negotiations, the key factor would be that IOS would not employ jurisdictional means in the United States directly and would not itself engage in activities that were subject to the jurisdiction of the Commission.

Now, we had therefore worked out a --

HEARING EXAMINER BLAIR: I understand you had problems.

But what I want to know is --

THE WITNESS: Well, this is what I explained to him.

HEARING EXAMINER BLAIR: Well, tell me what you told him.

THE WITNESS: I am telling it to you as I was telling it to him.

HEARING EXAMINER BLAIR: Your understanding is what you told Mr. Lipper at the time?

THE WITNESS: Yes.

HEARING EXAMINER BLAIR: All right.

THE WITNESS: Now, in connection with the placement of orders, we have to have a system where all of the speed and efficiency involved in the pre-settlement direct placement is not interfered with, and yet the jurisdictional means for placing orders are taken outside of the United

States.

What we had worked out in rather elaborate series of specific agreements with the Commission's staff, was a method whereby an independent, non-affiliated entity outside of the United States would, on our behalf, place an order with a New York Stock Exchange member firm located outside of the United States.

That order would be, in effect, transmitted into the United States through a telephonic and open line telex set-up to the New York office of that member firm where it would be executed or in turn passed on to another member which was going to execute, with the report of the execution then going from either the executing member firm to the New York office of the firm with the overseas office as well, or from the New York office of the firm with the overseas as well as if it were the executing broker.

That would in turn pass back to the European office of the member firm, which would in turn pass that to the non-affiliated, independent entity which would in turn pass it back to Geneva.

All of this took no more than about 90 seconds. And this was the system that was required.

HEARING EXAMINER BLAIR: And this is the system that you explained to Mr. Lipper was required?

THE WITNESS: That I asked him to help design.

HEARING EXAMINERBLAIR: Very well.

Go ahead.

BY MR. LA PRADE:

Q Now, did he relate to you why Zuckerman, Smith was not interested in furnishing that service?

A Yes, he did.

Q And what did he tell you?

A He said that with the exception of himself, all of the partners of Zuckerman, Smith were at a point in their careers and age that they did not want to really expand their business beyond what it was at present.

He said that they were not interested in opening offices in Europe and they were not interested in making capital expenditures that could run well into the six figures and maybe close to the 7 figures.

Q Did Mr. Lipper indicate to you whether he was capable of furnishing that service?

A He indicated that he would form a member firm, that the member firm would have overseas offices as well as a New York office and that he would work with our then counsel, Mr. Haft, to develop the exact procedures that would satisfy what seemed to be the pending outcome of the negotiations with the Commission.

Q Now, did you-- strike that.

Well, what assurance did you give Mr. Lipper which induced him to form his broker-dealer firm?

HEARING EXAMINER BLAIR: What, if any.

MR. LA PRADE: Right: What, if any.

A Mr. Lipper was assured by me that there would be enough business coming from IOS generated sources to cover the kind of investment that was being entailed.

Q Now, did you convey this assurance to Mr.Lipper?

A Yes.

Q Now, were you required-- well, strike that.

Did Mr. Lipper, in formulating or setting up his brokerage business, seek your aid in obtaining capital?

A No.

Q Did there come a time in 1967 when Mr. Lipper sought your aid in obtaining additional capital for his brokerage firm?

A In October or November of 1967, Mr. Lipper requested that IOS guarantee an indebtedness that his brother would assume, which guarantee would make policy the supplying of subordinated capital to his firm.

Q To whose firm?

A Arthur Lipper Corporation.

HEARING EXAMINER BLAIR: Was that request made to you?

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THE WITNESS: Yes.

Q Now, did Mr. Lipper explain to you why he needed this additional capital?

A Yes, in general terms.

Q Can you relate what he told you with respect to this?

A There was a problem of maintenance of minimum capital requirements, that that problem arose partly because of the fail situation generally that existed in the street and partly because of the expansion of his business and that, therefore, he needed another half-million dollars or so of subordinated capital just to be on a completely safe basis for net capital purposes.

Q And did IOS guarantee the loan?

A IOS gave a guarantee to Guinness; Mahon Company, which is a British merchant bank, and that British merchant bank-- that guarantee was on an indebtedness assumed in a loan from Guinness, Mahon to Michael Lipper, a brother of Arthur Lipper,III.

Q Now, what relationship does the Guinness, Mahon bank of London have to the IOS complex?

A Guinness, Mahon at that time was a sub advisor or investment advisor in respect of monies managed in the sterling area.

Specifically, Guinness, Mahon managed about $12 million at that time, which was invested in sterling

securities by the Fund of Sterling, Ltd. and other Sterling entities.

Also, Guinness, Mahon had the beginnings of a proprietary fund account to invest in the United States, a very small amount of money involved in that.

We generally had a close working relationship with Guinness, Mahon which flowed from this investment advisory relationship.

Q Do you know how Mr. Lipper came to select the Guiness, Mahon bank?

A No, I don't know.

Q Now, did there come a timewhen the amount of the loan was increased?

A Yes.

It was increased from either half a million to a million or there was a separate loan put on for a half a million. But the total indebtedness that was guaranteed had developed to an indebtedness of a million dollars.

Q And this million dollars was guaranteed by IOS?

A Yes.

Q And this was in 1967?

A Well, the million dollar increase from a half million dollars was in '68, I believe.

Q I see.

In what part of '68, do you remember? The early part or the late part?

A I have no recollection.

Q Are you familiar with the manner in which IOS -- I mean, Arthur Lipper Corporation furnishes -- well, strike that.

Are you familiar with the communications network for executing transactions on behalf of IOS affiliated funds

which is currently -- or, which was in use in 1966 and '67?

A Yes, sir.

Q Now, with respect to the Fund of Funds proprietary funds sub-advisors who were located in the United States, can you tell us how their orders were transmitted or were executed?

A Well, they didn't give orders.

HEARING EXAMINER BLAIR: It appears that we're going into a new area at some length.

We will have a ten-minute recess at this point.

(Short recess taken at 4:00 o'clock p.m.)

HEARING EXAMINER BLAIR: Back on the record.

Would you repeat the last question, please?

(Record read.)

BY MR. LA PRADE:

Q In those instances where the FOF prop. funds -- where the sub-advisors to the FOF prop. funds were located in the United States, how would transactions -- how could they execute transactions in the American securities markets?

A They didn't execute transactions in the American securities markets.

Q Well, how were transactions executed on the American securities markets on behalf of these funds?

A The sub-advisors merely made suggestions. Their suggestions were transmitted through the communications network to London and Dominion.

Q How did they get to London & Dominion from the United States?

A Generally over the Arthur Lipper lines.

A sub-advisor would recommend the purchase of, let us say, a thousand shares of U. S. Steel. He would recommend that by either calling that recommendation into Lipper and asking that it be transmitted to Europe or telexing it into Lipper and asking that it be transmitted to Europe.

Lipper would then transmit it to his office in London. From his office in London it would be transmitted to London & Dominion Trust Company, which occupied the adjacent office.

London & Dominion Trust Company would then transmit thatsuggestion to IOS offices in Geneva. The IOS officer on duty in Geneva that day to clear or reject suggestions, would either approve it or disapprove it, relaying that approval or disapproval back to London & Dominion.

If it was an approval, London & Dominion would then give the order to Lkpper. Lipper would then give the order from London to New York. If it were to be executed by

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rthur Lipper Corporation, it would then be executed in ipper-New York with a report back to London and then back hrough to Geneva, or it would be passed on to the other ember firm that was to do the execution.

Q In those instances where the order was to be assed down to the other member firm to do the execution, ho would receive confirmations from that other firm evi- encing that the transaction had been completed?

A Well, the confirmations themselves were sent o London & Dominion Trust Company and then forwarded by them o IOS in Geneva.

A carbon copy or a notation as to every execu- ion was done. It was sent over at the end of each day to rthur Lipper Corporation for its records in connection with he ministerial pricing of the funds involved.

Q Well, what ministerial records did Arthur ipper perform for the IOS affiliated funds at that time, in 967?

A After the settlement?

Q Right.

MR. KLEINMAN: Would you clarify that?

MR. LA PRADE: The ministerial functions.

MR. KLEINMAN: All right.

A Memo record keeping and pricing of American rtions of portfolios; also, through Arthur Lipper Corporation,

instructions were delivered to the Bank of New York, which was the custodian of securities for the various funds, as to the delivery in or delivery out against payment.

Q What do you mean by "pricing"?

A Well, a fund has to have a net asset value every day as the basis for either the rrdemption of existing shares or the issuance and sale of new shares.

The pricing each day is arrived at by -- is for the purpose of determining the net asset value per share. And in order to determine that, you have to price out by extending the numbers of shares of each security you have times the price closing of that security on the market, which gives you the value for that position in the portfolio each day.

You add all of these positions up, subtracting whatever obligations are outstanding, because there are purchases and sales each day, and you come to a net position, the net value of position in securities each day.

Then that information would be transmitted to Geneva, and it would be used as the basis for the net asset value calculation, which could only bedetermined after putting in the cash assets of the Fund, which were held in Europe and controlled in Europe.

Q Now, in 1967 and 1968, was any other American broker-dealer furnishing pricing functions for the IOS Funds?

A Overall pricing functions, no, certain member firms were assisting in the pricing of particular proprietary accounts which may have been completely handled on executions with that member firm.

Otherwise let's say Alger Fund, which was a proprietary fund account, might have all of its executions handled through the firm of Jesup & LaMont. Jesup & LaMont would be doing a pricing for Alger and passing it on to Lipper.

Q It would be passed through Lipper, though?

A Yes.

Q And Lipper was the central clearing house?

A Because Lipper maintained, as part of his communication system, what is called a Fax machine.

A Fax machine is a device whereby over an open telephone line you tramsnit an image, like a Xerox reproduction.

Since the prime records of each of these funds were maintained in Geneva, they had to have in the accounting department in Genefa each morning a complete record of the transactions of the day and the calculations of the day so that they could be verified and then appropriate entries could be made.

Over the Fax machine maintained in the Lipper office each day was a chronic link of all trades for all of the

various funds.

Q Now, with respect to those FOF proprietary funds where the sub-advisors resided outside the United States, were the orders -- could the Fund sub-advisors place orders directly into the United States or did they have to go through Lipper?

A They had to go through London & Dominion because the location of a sub-advisor, whether in or out of the United States, did not affect the obligations that we had imposed upon us under the settlement agreement; namely, to avoid jurisdictional contact with the United States.

So, therefore, regardless of where the sub-advisor was, in all instances the order for execution came through London & Dominion.

Q Now, in 1967, were all orders executed on behalf of the IOS affiliated funds placed -- or executed in America placed through Arthur Lipper Corporation?

A No, not all.

Q Was there any reason for that?

A Depending upon the proprietary fund or the fund itself and the broker selected, so other brokers had established at least elements of the communications network, which made resort to Lipper unnecessary.

For example, Jesup & LaMont had an open telephone line between New York and certain sub-advisors who were

situated in the Bahamas.

HEARING EXAMINER BLAIR: Mr. Cowett, we're under a time limitation, in so far as your presence is concerned.

THE WITNESS: Yes, sir.

HEARING EXAMINER BLAIR: Again, I admonish you to answer directly.

Don't try to justify the answer, unless there is a question asked by counsel following your explanation.

THE WITNESS: All right.

HEARING EXAMINER BLAIR: Go ahead.

BY MR. LA PRADE:

Q Now, do you know, in 1967, what portion of Lipper's -- Arthur Lipper Corporation's business was derived from IOS?

A No.

Q Do you know what portion of the IOS business was executed through Lipper Corporation?

A In approximate terms.

Q Well, would you give me those approximate terms?

A Approximate 40 percent.

Q 40 percent of the IOS business?

A Yes.

Q I see.

Now, can you tell us the volume of the IOS business dollarwise in 1967?

A What do you mean by "volume"?

Q Well, you said 40 percent of the volume of IOS executions, of affiliated funds executions were executed through Lipper Corporation; is that correct?

A Yes.

HEARING EXAMINER BLAIR: Did you agree with what he said?

THE WITNESS: Yes.

HEARING EXAMINER BLAIR: All right.

BY MR. LA PRADE:

Q Now, can you tell us what the total volume was that you were relating this 40 percent to?

A Well, I would have to do it in terms of brokerage commissions.

Q Right.

A It varied from month to month depending upon the activity in the accounts in each month.

My estimate of the high of activity in any particular month was approximately two million dollars of commission volume and would be a low of about $850,000 commission volume.

Q And 40 percent of that would have been --

A Yes.

Q Okay.

HEARING EXAMINER BLAIR: Would have been what?

THE WITNESS: Lipper commissions, yes, sir.

HEARING EXAMINER BLAIR: I see.

BY MR. LA PRADE:

Q Now, what types of facilities were in operation in 1967 between Arthur Lipper Corporation and IOS, other than the facsimile?

A There was an open telephone line between -- not open; direct telephone line between the Lipper switchboard in Geneva and the Lipper switchboard in New York. That was tied through the Lipper switchboard into the IOS switchboard in Geneva.

Q What was that line used for?

A Primarily during market trading hours for contact with sub-advisors in the United States and contact by the IOS Geneva-based portfolio advisors with various people in the securities business in the United States, to get quotes, to ask for research ideas and things of that nature.

There was also a direct telephone line from

Lipper-New York to Lipper-London, and another line from Lipper-London to Lipper-Geneva, so that in effect there was a line to Geneva through London.

It could be used London-Geneva simultaneously with being used London-New York.

There were several telex lines to London, through London, to Geneva, from Geneva to a little French town called Ferney Voltaire, which is just over the border in France from Geneva where IOS investment fund accounting was located.

The facsimile equipment worked over these telephone lines and the telex lines worked independently of the phone lines.

Q Did you maintain such elaborate communciations with any other brokers during this period, in 1967 and 1968?

A No, not into Geneva.

Q Well, did you maintain any direct lines with any other brokers in the United States during that period?

A We had an office in the Bahamas which had the similar setup from New York and another brokerage firm. There were quite a few brokers that maintained open telex lines to and from Geneva or London.

Q I see.

Now, what was the name of the firm you maintained this Bahamian --

A Jennup & LaMont.

Q I see.

Now, with respect to IIT and International Investment Trus, how are orders executed on behalf of that organization?

HEARING EXAMINER BLAIR: How were they?

MR. LA PRADE: Yes, in 1967.

A In exactly the same fashion, with the exception that it should be noted that IIT was and is traditionally run from Geneva, so that instead of having to pass along recommendations for approval or rejection from Geneva, the portfolio managers were in Geneva and there was no sub-advisor structure.

Q And those orders that were executed through Lipper Corporation were transmitted through the London & Dominion Trust Company setup?

A To London through London & Dominion Trust Company to Lipper.

Q All right.

Now, with respect to the Regent Fund, how were those transactions executed?

A The function of London & Dominion Trust Company in those days was fulfilled from Canada by J. H. Crang & Company, which a Canadian member firm on the Canadian Exchange.

And the portfolio manager for Regent Fund was a

direct employee of the IOS organization, so it was a similar situation to IIT.

He would pass his orders on to J. H. Crang and J. H. Crang fulfilled the London & Dominion role but from Canada.

HEARING EXAMINER BLAIR: The manager was physically present in Canada?

THE WITNESS: Yes.

BY MR. LA PRADE:

Q Now, in 1967, did IOS have any arrangements with Arthur Lipper Corporation where Arthur Lipper Corporation would pay expenses occurred by IOS personally coming to the United States?

A No.

Q How about in 1968?

A No.

Q How about in 1969?

A No.

Q Now, on occasion in 1967 -- strike that.

Did you on occasion in 1967 come to the United States?

A Yes.

Q And what hotels would you stay at while in New York?

* * * * * * * * * * * * *

A Well, I asked, I think in the course of conversations it developed as a suggestion that I had, namely, that IPC prepare a listing of the business which it had done for various funds in selling shares over the years, recent past.

When that listing had been prepared and we looked at it -- it took a few months to do -- then I suggested to Mr. Grant that he might go to see the various funds involved.

There was just about every fund in the industry which some sales had been generated. I wanted him to see whether it was possible, on a retroactive basis, to pick up some reciprocal business where it had not been picked up in the years past.

Q Did you have any discussions with Mr. Sutner along this line?

A Mr. Sutner was present during some of these discussions.

It was agreed that certain funds that he particularly was close to by reason of past personal relationship with individuals, he would contact as opposed to Mr. Grant.

Mr. Silver, I believe, was to contact one or two, as well.

Generally, the problem was left in the hands of Mr. Silver and Mr. Grant particularly, to develop the mechanics that would conform to what was proper and yet at the same time mechanics that were workable.

Q Now, did Mr. Silver take any part in these

conversations?

A Oh, yes.

Q And do you recall what he said during these conversations?

A With respect to what?

Q With respect to obtaining reciprocal business.

A Mr. Silver was very much a part of the team, and the team was concerned with trying to realize on a corporate asset which had not been realized on in the past.

What he specifically said as opposed to what Mr. Grant said or what I said, I just can't tell you. It's too far in the distant past.

Q Did he point out generally any areas where you might run into trouble in attempting to obtain reciprocal business?

A Well, Mr. Silver had come recently to the SEC and was one of the acknowledged experts, I believe, in the legal profession.

HEARING EXAMINER BLAIR: Did he point out anything to you, Mr. Cowett?

THE WITNESS: He only had suggestions as to how it could be accomplished.

HEARING EXAMINER BLAIR: Very well. Go ahead.

BY MR. LA PRADE:

Q Now, in these discussion with Mr. Silver, Mr. Grant and Mr. Sutner, was any attention paid to doing business on regional exchanges?

A This was something that I particularly suggested as a recognized and easy way of getting reciprocal benefits.

But we went beyond that. I forget who originally suggested it, but very early in the discussions we decided it was appropriate that IPC join the Pacific Coast Exchange.

A subsidiary of IPC, called Regency Securities Corporation, was organized and application for its membership on the Pacific Coast Exchange was filed, and was approved. It was posted for final approval process of the members the very day that Exhibit 36 became public and the Pacific Coast Stock Exchange requested that the application be withdrawn.

(Continued next page.)

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BY MR. LA PRADE:

Q Now, in 1966, did you have any discussion with anyone at IPC concerning the direction of Fund of America commission business on a reciprocating basis?

A Yes.

Q And with whom -- strike that.

When did that take place?

A Well, there were several instances, not just one, where I discussed with Mr. Grant or Mr. Galpeer and Mr. Silver establishing the kind of situation where IPC would be in a position to get some benefit from the brokerage generated by Fund of America.

Q Did you have any method in mind at the time?

A Well, the application on the Pacific Coast Stock Exchange was particularly patterned after the Waddell & Reed experience, and that was to be the chief pattern.

Q Now, during these discussions did Mr. Silver have any observations to make?

A Mr. Silver was very much for the application on the Pacific Coast Stock Exchange. Both he and Mr. Grant indicated that after checking with Mr. Galpeer, whatever was done would have to be also clarified in the Fund of America prospectus, and so I discussed this further with Mr. Galpeer.

He felt that the Fund of America prospectus

should make it clear that IPC would directly or indirectly get some benefit potentially out of Fund of America transactions and that perhaps this also ought to be disclosed in a proxy statement.

We therefore had to wait until the prospectus could be amended and the proxy statement could be issued.

Q Now, you stated that IPC -- it should be disclosed in a prospectus that IPC was going to get some benefit from these transactions?

A Yes.

Q Yes?

A Yes, sir.

Q Had you ever seen -- strike that.

Well, was the prospectus amended?

A I understand the prospectus was amended.

Q Were you ever shown a copy of the amended prospectus?

A I have seen it, yes, sir.

Q And do you feel that the amendment that is contained in the 1967 prospectus adequately sets forth that IPC is going to get some benefit?

MR. PHILLIPS: Objection.

MR. KLEINMAN: We rise to object uniformally.

MR. LA PRADE: On what grounds?

MR. KLEINMAN: As to what Mr. Cowett 's feelsing are as to what the prospectus reveals.

HEARING EXAMINER BLAIR: What relevancy does that have, Mr. LaPrade, what Mr. Cowell believes about the prospectus?

MR. LA PRADE: Well, because Mr. Cowett at the time was a director of IPC --

HEARING EXAMINER BLAIR: Oh, I understand he would be concerned in an abstract way, but where is the relevancy to the issue charged here?

MR. KLEINMAN: I'm almost tempted, your Honor, to make a self-serving statement, which would be a marvelous disclosure.

MR. LEVIN: I think fundamentally it's objectionable as to the form of the question. I think Mr. La Prade can find a way of stating the question properly.

HEARING EXAMINER BLAIR: Mr. LaPrade, the question I have asked you is to give me the relevancy of the answer to the question you propounded and to which objection has been raised.

MR. LA PRADE: I think it goes to Mr. Cowett's involvment in the proceedings, in that at the time he was a director of IPC he was also affiliated with IOS.

HEARING EXAMINER BLAIR: Well, if that's what you're concerned with, perhaps you can ask him if after

reading it if he did anything to have it further amended?

MR. LA PRADE: All right.

HEARING EXAMINER BLAIR: Ask that question and withdraw the other and we can proceed.

MR. LA PRADE: I withdraw the previous question.

HEARING EXAMINER BLAIR: Very well.

After reading the amended prospectus, did you then take any steps to have it further amended?

THE WITNESS: No.

BY MR. LA PRADE:

Q Are you able to identify the Fund of America prospectus?

A Yes.

MR. LA PRADE: May I have the April 1st, 1967 prospectus of Fund of America marked for identification as Division's Exhibit 38.

(So marked for identification.)

MR. LA PRADE: I would like to have the Fund of America prospectus for April 1st, 1968 marked as Division's Exhibit 39 for identification.

(So marked for identification.)

HEARING EXAMINER BLAIR: Which pages are -- would we be referring to?

MR. LA PRADE: The pages which show the amendments.

In the '67 prospectus, the pages are -- may we go off the record, your Honor?

HEARING EXAMINER BLAIR: Yes.

Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

BY MR. LA PRADE:

Q Have you looked at the -- have you seen this prospectus before?

A Yes, I have.

HEARING EXAMINER BLAIR: Which one?

MR. LA PRADE: Exhibit 38.

A Yes.

Q Now, have you read the portion on page 3 relating to brokerage, which states "orders may also be placed with brokers who " --

A Over here (indicating)?

Q Yes.

I would have Mr. Cowett read into the record that language which relates to the statement relating to the amendment that he was discussing earlier.

MR. PHILLIPS: Can I have the date of the prospectus?

MR. LA PRADE: It's an exhibit.

MR. PHILLIPS: The date, please.

MR. LA PRADE: April, '67.

MR. PHILLIPS: April '67?

MR. LA PRADE: Right.

THE WITNESS: It appears under the heading "Brokerage" on page 3 of Exhibit 38.

The language is as follows:

"Brokerage may also be so allocated at the request of dealers, including the principal distributor, who offer fund shares."

BY MR. LA PRADE:

Q Yes, thank you.

Now, had you read this in 1967?

A I saw the prospectus in both draft and final form.

Q And did you feel that that disclosure was adequate?

MR. KLEINMAN: I object.

MR. LEVIN: I object.

HEARING EXAMINER BLAIR: Sustained.

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BY MR. LA PRADE:

Q Did you feel that disclosure adequately -- or, that that statement adequately disclosed that benefits were being returned to IPC?

MR. KLEINMAN: There's an objection again, your Honor.

You know, I'm tempted to let the answer in.

HEARING EXAMINER BLAIR: Either object or not.

MR. KLEINMAN: Yes, as to form.

HEARING EXAMINER BLAIR: Sustained.

MR. LA PRADE: Form?

MR. KLEINMAN: Yes.

HEARING EXAMINER BLAIR: Go ahead, Mr. LaPrade.

BY MR. LA PRADE:

Q Well, in what manner, in 1966 and 1967, were you suggesting that IPC benefit from reciprocal business?

HEARING EXAMINER BLAIR: Suggesting where?

MR. KELINMAN: To whom?

MR. LA PRADE: To the IPC persons that he's been testifying about.

A If IPC were able to become a member of a stock

exchange as other mutual fund organizations did, then IPC would be able to receive either give-up for transactions executed on these exchanges or to establish a facility for direct executions on such exchanges.

Q Now, in what --

A That was the Pacific Coast Stock Exchange.

Q All right.

A And this would have been a pattern of Waddell & Reed or IDS or other organizations that joined.

A second method was on being able to get give-up from regional stock exchange business, transactions with other firms, which IPC could not do at thatpoint, in the opinion of its counsel, until the prospectus had been amended.

A third would be give-up on over-the-counter business transacted with other people or a variety of those three methods.

Now, I --

MR. PHILLIPS: Objection.

He's answered the question.

HEARING EXAMINER BLAIR: If you've finished being responsive, then stop.

THE WITNESS: Well, I was just going to add one more point to it.

And that was, the crucial thing, as far

THE WITNESS: Mr. Grant, I assume.

HEARING EXAMINER BLAIR: Did you ask him to do that?

THE WITNESS: To keep in touch with us, yes.

BY MR. LA PRADE:

Q Now, when it became apparent, as you testified, that IOS would have to divest itself of IPC, did IOS take any steps to prepare for the sale of IPC?

A Yes, sir.

Q And could you tell us what steps IOS took at this time?

A We had originally contemplated, when we acquired IPC, that there would be an 18 month to two-year, to perhaps three-year period of loss while the operations of IPC were changed and built to be sound profitable operations.

The fact that there were losses during the period of our ownership did not particularly concern us.

Q What period was this that the losses occurred?

A We acquired IPC at the beginning of August '65. So, it was '65-'66, but when it became apparent that IPC would have to be divested as part of the settlement with the SEC, it became incumbent upon IOS to get IPC into a profit position as quickly as possible, and to leave -- put IPC into a posture whereby it could be sold with the buyer getting a sound business.

So, the first step that we did, and I guess the most important, was to --

Q Let me interrupt you.

What part did the posture of presenting a profit for IPC play in your opinion in making IPC a more saleable item?

A It wasn't so much a profit per se.

It was the fact that it was an organization that could earn a profit. A buyer had to recognize that there was a viable entity being purchased, and in connection with this we sent into New York our former treasurer and financial vice president, a gentleman by the name of Morton Schiowitz.

Q At the time you sent Mr. Schiowitz to New York, was he an employee of IOS or any of its affiliated companies?

A Mr. Schiowitz, when he came to New York, continued to be an officer of IOS for a period of time, but he went on to the payroll of IPC.

Q Now --

HEARING EXAMINER BLAIR: You mean when he first came to New York he became an employee of IPC?

THE WITNESS: That's correct.

HEARING EXAMINER BLAIR: But being paid by IOS?

THE WITNESS: No. He was paid by IPC, but he continued to hold an office in IOS.

HEARING EXAMINER BLAIR: Was he paid in connection

A Yes, sir.

Q How were these transmitted to you?

A Either they were addressed directly to me or they were copies of letters addressed by Jefferies & Co. to persons other than me but sent to me because they were in conformity with my instructions.

Q Now, in 1967, after the creation of the Arthur Lipper firm sometime in March of 1967, did you ever direct Mr. Lipper to give up to IPC on over-the-counter transactions executed on behalf of the FOF Prop. Funds or IIT or the Regents Fund?

A Yes, sir.

Q Now, what arrangement did you have with Mr. Lipper in 1967 concerning these give-ups?

A What arrangement?

Q Did you have any arrangement with Mr. Lipper in 1967 with respect to his giving up a portion of the commission earned on executing transactions directed by you?

A I understood that Mr. Lipper, or Arthur Lipper Corporation was consistent with the rules and regulations of the various regional exchanges, and the NASD, and would give up in the same fashion that any other broker we were doing business with would give up; generally to a 50 or 60 per cent percentage limitation.

Q Did you have any discussions with anyone at

Arthur Lipper Corporation concerning this arrangement?

A This was always understood, sir. I didn't have to explain it or describe it.

Q Well, how did -- was Lipper -- did you communicate with Mr. Lipper prior to your placing these -- your first orders?

A No. I don't believe so.

Q You just placed the orders, directing him to give up a portion of his commission?

A Correct, sir.

Q Did Mr. Lipper question this procedure in any way --

A No, sir.

Q (Continuing) -- at the time?

A No, sir.

(Continued on next page.)

Q Now, do you know what commission Mr. Lipper was charging the Fund of Funds, or Region -- Fund of Funds, Proprietary Fund, Region Fund or IIT, for executing transactions in the over-the-counter market, on behalf of these funds?

A Minimum New York Stock Exchange commission rates.

Q Did you ever discuss with him the possibility of his reducing that commission?

HEARING EXAMINER BLAIR: You mean Lipper?

Q Yes.

A There came a time when we had such a discussion.

Q When did that time come?

A I don't recall whether it was late '67 or in '68, but Mr. Lipper on his own initiative discussed the possibility of being able to charge less than the minimum Stock Exchange commission rates, and advised me that he and or Mr. Conwell, as his counsel, were presently reviewing this possibility and trying to clear it with the New York Stock Exchange.

Q Now, in the early part of 1967, however, it's your testimony he was charging me full New York Stock Exchange commission?

A We didn't begin business until April '67.

Q April of '67?

A Yes.

Q And this continued through the summer of '67?

A Yes.

Q Could it possibly have continued through the end of 1967?

A The practice of charging full New York Stock Exchange commission rates continued well beyond that.

Q It continued in 1968?

A Because the New York Stock Exchange said no.

Q Okay.

So, it was in being at all times?

A Up until comparatively recently.

Q Now, at times would it be possible for the same broker to be executing both sides of trades, directed by you on behalf of the Fund of Funds, or IIT, or the Regent Fund?

A You mean handling both the buy and sell side?

Q Right.

A It's always possible, in any trade.

Q Right.

And it happened during that time?

A I'm sure it did.

Q Now, in those occasions when it happened, was there any discussion as to a reduction in the commission, when this involved over-the-counter executions?

HEARING EXAMINER BLAIR: Discussion with whom?

MR. LA PRADE: With any broker.

HEARING EXAMINER BLAIR: By whom?

MR. LA PRADE: Between Mr. Cowett, or anyone connected with IOS, with the executing broker.

A I never got involved in a discussion on an individual trade basis with any broker on any commission subject.

Q You just placed the orders?

A I never placed a specific order.

HEARING EXAMINER BLAIR: Was there any discussion on a general basis with a broker, in which, in substance, or in effect, the question of what would happen if that particular broker performed on both sides of the transaction?

THE WITNESS: There may have been, but I do not recall being a party to any such discussion.

BY MR. LA PRADE:

Q Now, in 1968, did there come a time when you directed Lipper Corporation to transmit large sums of money to IPC? Well, did you direct Arthur Lipper Company to pay to IPC large sums of money?

MR. KLEINMAN: We'll need further definition and clarification of the question.

HEARING EXAMINER BLAIR: Yes.

You mean those monies that were owing by Lipper to IOS or just out of the clear blue or --

MR. LA PRADE: Just a general question.

HEARING EXAMINER BLAIR: To lend them money or --

MR. LA PRADE: Did he ever direct them to turn

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over any money. Then we can get into the arrangement later.

HEARING EXAMINER BLAIR: Did you ever -- on that basic question -- what do you mean by large sum of money?

THE WITNESS: That's my question.

MR. LA PRADE: $300,000. $350,000.

THE WITNESS: Yes.

MR. LA PRADE: Can I have marked for identification as Division's Exhibit 41, an August 14, 1968 letter, to Arthur Lipper Corporation?

(Whereupon, the above-described document was marked Division's Exhibit 41 for identification, as of this date.)

MR. LA PRADE: I'll show the letter to opposing counsel.

BY MR. LA PRADE:

Q Now, do you have any recollection of having -- of that letter, the origin of the letter?

A I recall having written this letter, yes.

Q What was your purpose in writing this letter?

A Well, I had given continuing instructions to Arthur Lipper Corporation, to pay over to IPC, on a regular monthly or periodic basis, 50 per cent of any amounts available for give-ups, by reason of over-the-counter trades.

At approximately this time -- at approximately

this time, we were just about ready to --

MR. KLEINMAN: Your Honor, can I rise to a point? This document has not yet been admitted in evidence, and questions are being asked and testimony given to it.

Is it the intention of the Division to introduce it in evidence?

MR. LA PRADE: Yes. I'll offer it in evidence.

MR. KLEINMAN: There's some objection to it.

HEARING EXAMINER BLAIR: Questions can be asked about a letter, without it necessarily being in evidence.

The information concerning the circumstances under which it was written, certainly would be appropriate.

MR. KLEINMAN: I appreciate that, your Honor. The question was for identification, did he know the letter. Now we are getting into the purpose of the letter and the background of the letter.

HEARING EXAMINER BLAIR: It doesn't have to be admitted immediately before questions can be asked about it.

Counsel all have copies, and you are familiar with the contents of it.

When we get to that point, why, we can consider the offering of it. But it's appropriate to ask these questions.

Overruled.

MR. KLEINMAN: If I may, your Honor, should this

document be excluded from evidence, we will have a record replete with testimony concerning it, notwithstanding the exclusion.

HEARING EXAMINER BLAIR: With respect to the purpose of the letter, there is no problem regardless of whether a proper foundation or otherwise might not be established. Nonetheless, the purpose of a particular letter would certainly be relevant.

Overruled, Mr. Kleinman.

Mr. Dudley?

MR. DUDLEY: My objection to this document being offered in evidence, and to the line of inquiry, relates to the fact that the pleadings in this action which the -- the order for proceedings stem -- go from a period of July 10, 1967 to August 5, 1968, and this letter, as you will note, is dated August 14, which is after the date of the pleadings.

I think that in order to limit the proceedings within the framework of which the Commission intended when they brought the proceedings, I don't see that we should extend, in effect, amend the pleadings at this time, or go into other matters.

HEARING EXAMINER BLAIR: I don't consider the pleadings amended in any manner, shape or form, Mr. Dudley. However, I think you are well aware, as I am, that conduct after an event may have probative bearing upon events preceding.

In this particular case, if conduct of a continuing nature is established, it would have some indication that -- that during the time in question, that same status existed.

Overruled.

Read the last question, please.

(Whereupon, at this time a portion of the record was read back by the reporter.)

MR. LA PRADE: I would like to clarify the record. The order referred during the period from on or about July 10th, 1967, to on or about August 5, 1968. And it doesn't say specifically to August 5th. It says on or about. So I don't feel that we are bound to a cut-off date of August 5th.

HEARING EXAMINER BLAIR: If you fail to establish the conduct between those specific times, I suggest that you may consider the need for amending the order. However, I have overruled the previous objection. Will you continue with your answer now, to the question, Mr. Cowett?

A (Continuing) At about this time, we either had concluded a contract, or were about to consummate a contract, which called for a closing as of September 30th, I believe.

And under that contract, our interest in Investors Planning Corporation, the IOS interest in Investors Planning Corporation, was to be disposed of.

There were certain representations in that contract,

as to what would be the working capital, and or net capital work of IPC, as of the date of closing, and it was for this purpose that I was interested in seeing the payments specified in the letter paid over to IPC, on or before September 30, 1968.

HEARING EXAMINER BLAIR: Are you saying that the $300,000 referred to in the letter, represented a debt that was owing by Arthur Lipper, as of August 14th?

THE WITNESS: No, it wasn't a debt, your Honor. There were give-up payments being made regularly into IPC by Arthur Lipper Corporation and other brokers.

HEARING EXAMINER BLAIR: Yes.

THE WITNESS: In order that we not have any question, though, that IPC's financial position as of the date of closing might not comply with the representations of the contract, I was interested in building into IPC, as quickly as possible, the cash necessary to assure me, as the seller of, having met all the contract provisions.

Also, the contract specifically provided, as I recall it, that after the date of September 30, 1968, there would be no more IOS directed give-up, into IPC.

So this was like an anticipation of amounts that would be otherwise received.

HEARING EXAMINER BLAIR: What contract provisions did you have in mind that would be helped by these two

payments of $175,000?

THE WITNESS: The contract between IOS, and I believe the company called Volk Technical Corporation, and, in the regular representations of the contract, it would specify that as of September 30, 1968, the net worth of IPC would be a certain amount, the cash and capital, net capital position of IPC would be in a certain amount.

The contract also made clear that after the date of September 30, 1968, there would be no further give-up directions into IPC by IOS.

HEARING EXAMINER BLAIR: But how would this improve the networth?

THE WITNESS: This would be $350,000, which would be received into IPC as cash, and taken into their balance sheet.

HEARING EXAMINER BLAIR: As a profit?

THE WITNESS: Certainly.

HEARING EXAMINER BLAIR: That's what I was asking, was the $300,000 due to IPC?

THE WITNESS: No. None of the give-up was due to IPC. This was money directed in by IOS, without a debt existing.

HEARING EXAMINER BLAIR: What I am trying to understand, Mr. Cowett, is, if Arthur Lipper was not obligated in some way to IPC for $300,000, when the cash came in from

Arthur Lipper, why would the books enter $300,000 in cash, on the debit side, and indicate that the $300,000 would go into earned surplus on the credit side? If that wasn't the bookkeeping --

THE WITNESS: That's true of every give-up payment. There was no obligation owed to IPC by Arthur Lipper or any other broker on any give-up payment made, your Honor.

HEARING EXAMINER BLAIR: Yes. But, as I understand your arrangement, it is that your give-ups ordinarily were paid after the fact.

THE WITNESS: Well, these were being paid after the fact.

HEARING EXAMINER BLAIR: There was an obligation when the broker takes the commission in, he takes it in as a commission, and ordinarily would indicate on his books that 50 per cent of that was payable to IPC?

THE WITNESS: Correct.

HEARING EXAMINER BLAIR: Now, when he paid that out, he would pick that obligation off of his books, and reduce his cash?

THE WITNESS: That's correct.

HEARING EXAMINER BLAIR: When IPC took it in, what bookkeeping entry would be made?

THE WITNESS: It would be shown as commission income, commission sharing income.

HEARING EXAMINER BLAIR: Commission sharing income already earned?

THE WITNESS: I am not an accountant, your Honor, but they would have no receivable on their books. This would be income received without a receivable existing.

HEARING EXAMINER BLAIR: All right, let me put it another way.

Except for this letter, would Arthur Lipper Corporation have made these payments on August 30th and September 30th, 1968?

THE WITNESS: No, sir.

HEARING EXAMINER BLAIR: They would not?

THE WITNESS: No, sir.

HEARING EXAMINER BLAIR: Very well.

THE WITNESS: They would have made the payments that were already asked for, namely the regular 50 per cent payment.

HEARING EXAMINER BLAIR: Right.

THE WITNESS: I should add that what this letter in effect did, was raise the percentage from 50 per cent to 60 per cent, on a retroactive basis.

HEARING EXAMINER BLAIR: That was not stated on --

THE WITNESS: No. But that's how it was, more or less, calculated.

(Continued on next page.)

BY MR. LA PRADE:

Q On a retroactive basis, would mean that on transactions that had been executed prior to August 5, 1968?

A Yes, it would have come to a 60 percent give-up instead of 50 percent give-up.

Q But on transactions executed prior, in some transactions that had been executed prior to August 5, 1968?

A That's correct.

Pre-existing transactions.

MR. LA PRADE: At this time, I will offer Division's Exhibit 41 in evidence.

HEARING EXAMINER BLAIR: Any objection?

MR. DUDLEY: I have an objection, your Honor, which I recorded, and I continue that objection.

HEARING EXAMINER BLAIR: I think it's fairly clear now, that the Division Exhibit has a direct relevance to the previous conduct.

Any other objection?

There being none, additionally, Division's Exhibit 41 is admitted in evidence.

(Whereupon, at this time, Division's Exhibit 41, previously marked for identification, was received into evidence.)

BY MR. LA PRADE:

Q Did there ever come a time when the give-ups on over-the-counter transactions directed by you through Arthur Lipper Corporation to IPC, on behalf of portfolio transactions executed by Fund Of Funds, Regent Fund or IIT, terminated?

A Yes, sir.

Q When did that point in time take place?

A I don't recall the specific date. It was, I think, early in 1969.

Q Can you tell us; did you terminate these arrangements on your own?

A A method was finally worked out, whereby without incurring the wrath of the New York Stock Exchange, Arthur Lipper Corporation held itself out, not only to the IOS generated funds, but to its other customers, as executing, or being able to, or willing to execute over-the-counter transactions for a total commission of 6 cents share, which was well below New York Stock Exchange minimum commissions.

Q Now, how did you learn that the New York Stock Exchange had approved of this?

A Well, I don't think they have approved of it yet.

Q I see.

Who informed you that it was permissible?

A I knew of -- I knew that discussions were going on with the Stock Exchange over a protracted period, to try

and evolve something like this.

The Stock Exchange, I was advised by Mr. Lipper and Mr. Conwell, was not kindly disposed to the idea, but finally, at some point in '68 or early '69, conceded that if the New York Stock Exchange member firm, namely Lipper, were executing the transactions, a charge sufficient to cover their expenses in the execution, that they would be permitted to do so.

The Stock Exchange, I understand, is still contesting what the expenses of this are, and meanwhile, the Lipper Corporation is charging 6 cents a share.

Q Now, with respect to your earlier testimony that you advised Arthur Lipper Corporation to turn over -- to direct $350,000 in monies to IPC, did you have any communications with any other brokers at that time, concerning the remission of sums of money to Arthur Lipper Corporation?

MR. KLEINMAN: Sums of money to Arthur Lipper?

HEARING EXAMINER BLAIR: You mean over and above the usual give-up?

MR. LA PRADE: No, just to turn over sums of money.

HEARING EXAMINER BLAIR: Well, let's be more specific. Canyou direct his attention to any area?

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MR. LA PRADE: All right.

I'll have marked for identification, as Exhibit

MR. LA PRADE: Okay.

BY MR. LA PRADE:

Q Were you overruled by anyone with respect to your position that the Funds should be placed in an impress account?

A I don't think it was a question of being overruled.

A determination was made by the people responsible for IPC management. I was not responsible for IPC management.

I was merely in the capacity of a stockholder wishing to sell his interest in IPC. So, I never had any official status to have a decision to be overruled.

Q Do you know who in IPC directed that the money should be paid over?

A I presume it was a collective determination.

HEARING EXAMINER BLAIR: Do you know?

THE WITNESS: No.

HEARING EXAMINER BLAIR: All right.

BY MR. LA PRADE:

Q Now, with respect to the over-the-counter transactions -- I will withdraw that question.

Was any benefit derived by the FCF Prop. Fund or IIT or the Regent Fund from these give-ups which were directed by you with respect to the portfolio transactions?

A None.

Q Now, did you ever disclose to the Board of Directors of the Fund of Funds that you were engaged in this conduct of giving up commissions on over-the-counter transactions?

A Yes.

Q And who were the members of the Board of Directors of Fund of Funds at that time?

A What specific date?

Q In 1967?

A In 1967?

Q Yes.

A From within the ICS Group, the directors were Mr. Cornfeld, myself, Mr. Buhl, B-u-h-l, and from outside they were Mr. Conwell, Wilson Wyatt, Eric Scott, Pierre Renfray, and I believe in the latter part of '67 Pat Brown.

Q Now, where did these discussions take place?

A In directors' meetings.

Q In directors' meetings?

A Yes.

Q And were any questions raised at that time by any of the directors with respect to that course of conduct?

A No.

Q Did Mr. Conwell ever make any statements concerning this mode of operation?

A Mr. Conwell explained that in his opinion this

mode of operation was appropriate, since he did not know of any legal way the Fund could get any benefit from these commissions.

Q Did Mr. Conwell know at the time that you were directing Arthur Lipper Corporation to give up 50 per cent of the commission to IPC?

A On over-the-counter?

Q Yes, on over-the-counter transactions.

A Yes.

Q And he expressed no concern with that?

A No, sir.

Q Did Mr. Conwell at the time know IPC's relationship with Fund of America?

A Yes, sir.

Q And how would he have known that?

A Mr. Conwell represented IOS on a variety of matters; was very much involved in the settlement -- well, in the proceeding between -- involving IOS brought by the SEC and finally settled in May of 1967; was aware of the entire corporate structure of IOS and its subsidiaries, and IPC was a subsidiary.

Q Now, do you know whether or not in 1967 the shareholders of Fund of Funds were ever apprised of the fact that Fund of Funds propriety, the Prop. Funds, were given up 50 per cent of their commission on over-the-counter

transactions executed through Arthur Lipper Corporation?

A Not specifically advised, sir.

Q Do you know if they have ever been advised?

A They have never been specifically advised.

There has been a general generic statement in the FOF prospectus and in the FOF reports which could encompass this, but not specifically.

MR. LA PRADE: Mr. Blair, I'd like to have marked for identification, three prospectuses of Fund of Funds, one dated -- as Exhibit 43-A a prospectus of the Fund of Funds for March 1st, 1966.

(Whereupon, the above-referred to document was received and duly marked by the reporter as Division's Exhibit 43-A for identification, as of this date.)

MR. LA PRADE: I would also have the reporter mark as Exhibit 43-B the Fund of Funds prospectus dated June 1st, 1967.

(Whereupon, the above-referred to document was received and duly marked by the reporter as Division's Exhibit 43-B for identification, as of this date.)

MR. LA PRADE: And would you mark as Exhibit 43-C

the FOF prospectus dated May 4th, 1968.

(Whereupon, the above-referred to document was received and duly marked by the reporter as Division's Exhibit 43-C for identification, as of this date.)

HEARING EXAMINER BLAIR: Do you have a question?

MR. LA PRADE: Yes.

BY MR. LA PRADE:

Q Now, Mr. Cowett, could you look through Exhibits 43-A, B and C and tell us where in each of those exhibits the general disclosure is made?

HEARING EXAMINER BLAIR: Mr. LaPrade, I don't want to spend minutes looking over this whole thing if we can expedite it.

What is it you want him to do? Identify these as prospectuses?

MR. LA PRADE: Yes.

HEARING EXAMINER BLAIR: Can you identify those as prospectuses?

THE WITNESS: Yes, sir.

HEARING EXAMINER BLAIR: Very well.

MR. LA PRADE: At this point I would offer them in evidence.

HEARING EXAMINER BLAIR: Any objection?

MR. KLEINMAN: No objection.

MR. DUDLEY: No objection.

HEARING EXAMINER BLAIR: Division's Exhibits 43-A, B and C are admitted in evidence.

(Whereupon, the documents previously marked for identification purposes as Division's Exhibits 43-A, B and C were received in evidence.)

HEARING EXAMINER BLAIR: What's your next question?

BY MR. LA PRADE:

Q In respect to your previous testimony, where in those exhibits is the general disclosure of the fact that the FOF Proprietary Funds were given up a portion of their over-the-counter commissions to IPC?

A I make reference to -- for example, Footnote No. 1 on Page 24 of Exhibit 43-C, the last sentence. It's a generic -- there are similar footnotes in annual reports and prospectuses, financial reports starting with around 1967. I don't believe they were in prior years.

Q They would be the same as the disclosure in this footnote?

A The same purport, yes.

Q As on Page 24?

A Yes.

MR. LEVIN: What note on Page 23?

THE WITNESS: 24, Note 1, the last sentence.

MR. LEVIN: I see. Thank you.

A (Continuing) And there is a generic reference in here some place. It's a long prospectus, and if I had the time I'd be able to find it.

MR. KLEINMAN: Would it expedite matters if I refer you to Page 21?

MR. LA PRADE: Of which exhibit?

MR. KLEINMAN: 43-A.

HEARING EXAMINER BLAIR: Page 21, you say?

THE WITNESS: 43-A.

MR. LA PRADE: Right. Page 21.

THE WITNESS: Here it is. Next to the last -- no.

MR. KLEINMAN: The second full paragraph.

THE WITNESS: The third full paragraph. The third full paragraph.

BY MR. LA PRADE:

Q Read that.

A Purchases, sales or exchanges of securities for the Fund's portfolio are normally handled by Investors Overseas Services as the investment dealer of record, and IOS shares in customary commissions, if any, relevant to such transactions.

Q That's in Exhibit 23?

A 43-A.

Q 43-A?

A Right.

Q The prior references that you were talking about was in Exhibit 43-C?

A That was a footnote to a financial statement.

Q Page 18?

A I imagine you will find --

MR. KLEINMAN: For the record it's repeated in each of the exhibits. In 43-B it's on Page 21.

MR. LEVIN: Page 22 of 43-C.

THE WITNESS: Thank you. That's correct, the top paragraph.

BY MR. LA PRADE:

Q Now, in 1967, other than the testimony you have given here today, was IOS advancing any other monies to IPC -- well, were they lending money to IPC?

A Yes.

Q And could you tell us how these arrangements were worked out?

A IPC in the last four months of '65 and the entirety of '66 had lost an aggregate of about $700,000, and from time to time because of such losses which were continuing into 1967 it was necessary for IOS to make a subordinated lending to IPC, and a series of subordinated loans were put on.

Q And that started in 1966?

A '66, yes, sir.

Q And did it continue in 1967?

A Yes, it did.

Q Did it continue in 1968?

A I believe in 1968 the process was reversed in the sense that monies began to come back to IOS on the subordinated lendings.

Q And when did this reversal take place? Do you recall?

A Towards the latter part of 1967 the profit swing in IPC was quite dramatic. It lost money, a very substantial amount, in the first three months of '67 and started in the second quarter making some money, and at that point it was possible to reverse the subordinated lending process.

Q Now, when IOS was advancing monies to IPC, would -- how were these monies transmitted to IPC?

A Either through check or direct wire transfer, and the two banks that would have been involved would be either the Bank of New York, which was the bank of the main IOS accounts in the United States or Overseas Development Bank, which was the IOS owned bank in Geneva, Switzerland.

Q That's the same Overseas Development Bank that you testified earlier that you had directed Jablonski and Jefferies to remit monies to?

A I didn't testify earlier on that.

Q Well, I think the letters that were introduced in evidence, your directions were to pay monies to the Overseas Development Bank?

A No.

Q What was your instructions?

A Those letters weren't there.

Q When you changed the manner -- strike that.

When you changed your instructions to Jablonski and Jefferies, -- did there come a time when you changed your instructions to Jefferies and Jablonski as to where they should remit their --

A Yes.

Q When did that time occur?

A I believe late in '67 or in '68; I can't be sure of the exact date.

Q Now, did you give them instructions to remit monies to the Overseas Development Bank, at this time?

A I gave them instructions to remit monies to -- to Phillip Dubrer, care of the Overseas Development Bank.

Q What was Mr. Dubrer's relationship with IOS?

A Mr. Dubrer was the manager of Overseas Development Bank, and the person in whose name foreign stock exchange member seats had been held.

Q Did IOS have any control over those funds that were being remitted to Mr. Dubrer? 099

A Yes.

Q And IOS directed that monies could be paid out of the account of Mr. Dubrer's account?

Well, I'll withdraw the question.

When monies were remitted to Mr. Dubrer by Mr. Jefferies or Mr. Jablonski, what did Mr. Dubrer do with these monies ?

A Put into a segregated account, which was then taken in as an asset of Investors Bank, Luxemburgn or Orbis Bank, Germany, which were the two banks for which Mr. Dubrer held, as nominee, the memberships on the respective exchanges.

Q What relationship did the Orbis Bank have to IOS?

A Orbis Bank is a wholly owned subsidiary of IOS Financial Planning -- Financial Holdings, Ltd., which is, in turn, a wholly owned subsidiary of IOS.

Q How about the other bank?

A Same thing.

Q Now, were these loans ever repaid by IPC?

A Yes, they were.

Q They were repaid?

A Over the course of 1967 and 1968, and I believe there was a relatively small subordinated borrowing still in existence at the time when Equity Funding Corporation of America took over, and they would have been paid off after

that period.

Q During the period from May of '67 through the end of 1968, were you continually -- was IOS continually in negotiations, attempting to divest themselves of IPC?

A Yes.

Q Did you play any role in any of these negotiations?

A In most of the negotiations, I was the principal negotiator.

Q Can you give us the name of the firms with whom you were negotiating at that time?

A Well, they were myriad, sir.

Perhaps I can give you the names of the firms with which we concluded agreements which were aborted.

Q All right, fine. If there's not too many of them.

A The first agreement was with Keystone, in Boston, the Keystone Company that manages the Keystone Fund.

Q When did this agreement come?

A Summer of 1967.

The next agreement was with -- that was the fall 1967, and finally aborted in November, I believe, 1967.

Then we entered into an agreement with King ources Company, and we signed acontract. That aborted in spring of 1968.

Then we signed a contract with Vought Technical ration, in the summer of 1968, and that aborted in the r of 1968.

Then we signed a contract with Equity Funding Corporation of America in the fall of 1968, and that closed as of year-end 1968.

Q Now, during these negotiations that you had with these four that you just named, these four firms that you just named, were any representations made concerning whether or not -- were any assurances, not representations, given to any of these persons, as to whether or not IOS would continue to direct monies to IPC?

MR. LEVIN: I object. I think the witness already testified there was a specific statement to the contrary in the agreement.

HEARING EXAMINER BLAIR: He may say it again.

A There were no assurances given.

Q Were there any discussions along these lines?

A Yes. Any person sophisticated enough to be considering the expenditure of several millions of dollars to buy IPC, would look at the books of IPC, of course. And the books internally show the breakout between reciprocal and reciprocal oriented earnings, and other assets.

Every prospective purchaser with whom there was any degree of negotiations chose to treat the reciprocal earnings or receipts as non-recurring income.

The only thing which we would say is this: That our first -- IOS's first obligation was to try and get the

benefits that it could legally get, within the rules and regulations, SEC-wise, NASD, and Exchange, as they then existed.

That to the extent that there were transactions that IOS could not itself get any benefit from, there were benefits to be derived, and these benefits were spread around among a great many firms, and to the extent that there were decent relationships, perhaps some benefits would continue to be bestowed, but there was no representation or assurance.

MR. LA PRADE: I have no further questions.

I would at this time like to get in through Mr. Cowett, prospectus of the Regent Fund, and the ITT Fund.

HEARING EXAMINER BLAIR: In addition, you haven't offered into evidence the various exhibits. Do you wish to do that also?

MR. LA PRADE: Yes.

I would at this time offer into evidence Exhibits 42-A and 42-B.

HEARING EXAMINER BLAIR: Any objection?

MR. KLEINMAN: Those are which?

HEARING EXAMINER BLAIR: Those are the letters Cowett to Bear, Stearns.

MR. KLEINMAN: No objection.

MR. DUDLEY: No objection.

HEARING EXAMINER BLAIR: Division's Exhibits 42-A

and 42-B are admitted in evidence.

(Whereupon, at this time Division's Exhibits 42-A and 42-B previously marked for identification, were received in evidence.)

HEARING EXAMINER BLAIR: How about the FOF one? We identified them. Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

MR. LA PRADE: I would have marked for identification as Exhibits 44-A, the IIT prospectus dated June 1, 1966.

(Whereupon, the above-referred to document was marked Division's Exhibit 44-A for identification, as of this date.)

MR. LA PRADE: As 44-B, the IIT prospectus dated December 1, 1967.

(Whereupon, the above-referred to document was marked Division's Exhibit 44-B for identification, as of this date.)

MR. LA PRADE: I would have the July 1, 1967 IIT prospectus numbered as 44-C.

(Whereupon, the above-referred to document was marked Division's

Exhibit 44-C for identification, as of this date.)

MR. LA PRADE: I would have numbered as Exhibits 45-A, B and C, the Regent Fund prospectus.

45-A would be the Regent Fund prospectus bearing the date April 25, 1966; 45-B would be the April 21, 1967 Regent Fund prospectus; and 45-C would be the April 21, 1963 Regent Fund prospectus.

(Whereupon, the above-described documents were marked Division's Exhibits 45-A, B and C for identification, as of this date.)

MR. LA PRADE: I would have marked as Division's Exhibit 46, the April 21, 1969 IOS Regent Fund, Limited, prospectus.

(Whereupon, the above-described document was marked Division's Exhibit 46 for identification, as of this date.)

BY MR. LA PRADE:

Q Mr. Cowett, do you recognize those documents which are marked as Exhibits 44-A, B and C?

A Yes, I do. They're three versions of the IOS prospectus for 1966 and 1967.

Q Now, is there any disclosure in those prospectuses,

with respect to the over-the-counter give-ups which were directed on transactions affected on behalf of the -- on behalf of that Fund, IIT Fund?

A I don't believe so, sir.

Q And at the time, what official connection did you have with IIT?

A I was Vice President of IIT Management Company, FA.

Q Now, do you whether there was ever any disclosure made to the IIT shareholders?

A I don't believe so, sir.

Q In the prospectus or otherwise?

A No, sir.

Q Right.

Now, I would ask you to look at --

MR. LA PRADE: At this time I would offer these hibits in evidence.

HEARING EXAMINER BLAIR: Any objection?

MR. KLEINMAN: No objection.

MR. DUDLEY: No objection.

HEARING EXAMINER BLAIR: There being no objection, sion's Exhibits 44-A through 46, are admitted in evidence.

(Whereupon, at this time Division's Exhibits 44-A through 46, previously marked for identification, were

received into evidence.)

MR. KLEINMAN: Your Honor, bearing in mind the experience we had before, when Mr. Cowett was asked to examine the prospectus to find out where the disclosure provision was, may I suggest once again that these exhibits that have been introduced, do speak for themselves, if there is disclosure.

HEARING EXAMINER BLAIR: Yes.

The statement of the witness, however, is that there is no such disclosure, to his knowledge.

MR. KLEINMAN: Well, he was asked could he pick out a spot, and he wasn't sure.

Might I expedite the matter by referring the witness to Page 17 of these?

HEARING EXAMINER BLAIR: Yes, if there is something that would help his recollection.

MR. KLEINMAN: 44-A, and B.

MR. LA PRADE: Are these the IIT prospectuses?

MR. KLEINMAN: 44-A and 44-B. Pages 16 and 17 of 44-A and B and C.

HEARING EXAMINER BLAIR: Where on the page, Mr. Kleinman?

MR. KLEINMAN: If Your Honor please, on the last paragraph, the first column. Page 17. which would appear to be the same generic language.

THE WITNESS: No, it's not. It's not the same.

HEARING EXAMINER BLAIR: Are you now finished, Mr. LaPrade?

MR. LA PRADE: No, I have the Regent Fund. He's going through the Regent Fund now, and then the IOS, and that will be it.

BY MR. LA PRADE:

Q Have you looked at Exhibits 45-A, B and C, and Exhibit 46?

A Not in great depth.

Q Well, do you know of your own knowledge whether any disclosure was made in those prospectuses, of the arrangements, whereby you were directing of the portion of the over-the-counter commission, executed on portfolio transactions for the Regent Fund to IPC?

A I have no such knowledge.

Q All right.

Did you in fact ever disclose it to anyone connected with the Regent Fund?

MR. DUDLEY: Can I have that question clarified? Anyone connected with the Regent Fund, is that the question?

MR. LA PRADE: Yes. In an official capacity.

A I have no recollection of any such disclosure.

Q Okay. Now, do you know if there was any disclosure made to shareholders, in proxy statements or in --

A I have no knowledge of any such disclosure.

A No knowledge.

Q Did you ever write any letters to shareholders, disclosing these arrangements?

A I never wrote any letters to any shareholders.

Q Now, can you -- earlier you testified that the -- at some point Arthur Lipper, and you, had some discussion about reducing the commissions on over-the-counter transactions?

A Correct, sir.

Q And do you recall when that discussion took place?

A I think I earlier testified that it took place sometime late in -- the first such discussion took place late in '67 or early in '68, but I can't be sure when.

Q And you recall, you testified that this could not be done?

A That Mr. Lipper and his counsel attempted to work out a procedure for doing this, and it could not be done under the interpretation by the New York Stock Exchange, of its -- or the then interpretation of the New York Stock Exchange, of its anti-rebate rules.

Q Can you tell us what Mr. Conwell told you about this, at this time? Did he give you any reason why it couldn't be done?

A Yes.

The New York Stock Exchange took a very simple

* * * * * * * * * * * * * * * * * * *

And that you did not propose any changes?

A Correct.

Q Is that correct?

A Correct.

Q Could you tell us why?

A Mr. Galpeer was in effect my counsel at this point. My counsel advised it was appropriate. I saw no reason to question his advice, and that was it.

Q Now, you testified that -- that at the time you examined the amendment you were aware that pursuant to proposed reciprocal arrangements, IPC might be receiving cash payments from brokers as such reciprocal; is that correct?

A Correct.

Q Did you have any reason to believe that Mr. Galpeer was -- also knew of the cash payments when he prepared the amendment?

A Certainly.

Q You did have reason to believe?

A Yes, sir.

Q Would you tell us why you feel you had reason to believe?

A Anybody with the slightest degree of sophistication in the securities market, and Mr. Galpeer had the slightest degree of sophistication, accepted as a norm

at that point that give-ups on regional and over-the-counter business to any SEC members were completely acceptable and within the standards of what was permitted.

MR. LA PRADE: I'd like to move to strike that answer as not being responsive to Mr. Phillip's question.

HEARING EXAMINER BLAIR: There appears to be responsive.

MR. LA PRADE: He asked him what.

HEARING EXAMINER BLAIR: He told him why, because he felt he was sophisticated enough to knowwhat the standards were in the industry.

BY MR. PHILIPPS:

Q Now, Mr. Cowett, I believe you testified that a sum of money representing all the reciprocal that IPC received from Fund of America transactions had been paid back -- had been paid to the fund; is that correct?

A What I understand to be all of it, yes.

Q Yes. When did that payment occur?

A I don't know the specific date of repayment.

Q Can you give us the month?

A No. I can't.

Q Do you recall when you had discussions concerning the possible repayment?

A Yes, October, November of 1968 were the discussions, as I remember.

Q And that was prior -- that was after commencement of the Commission's inquiry into this matter; is that correct?

A Yes.

Q And it was prior to the commencement of these proceedings?

A Correct.

Q Is that correct?

A Yes.

MR. LA PRADE: Could I -- as a point of clarification, are you referring to the private investigation or the -- these administrative proceedings?

MR. PHILIPPS: I am talking about these proceedings, yes.

HEARING EXAMINER BLAIR: The administrative proceedings.

MR. LA PRADE: All right.

BY MR. PHILLIPS:

Q And I take it thatthe payment was made as a result of these discussions; is that correct?

A I can't testify of my own knowledge. I only know my own rule as just generally advising what I would do.

Q You testified that in these discussions you did not believe that the fund had a legal right to those --

to payment; is that correct?

A My belief went beyond that.

Q What was your belief?

A I believed that IPC might very well be violating NASD regulations if it wereto make that payment, that when I asked for specifically was a ruling or a specific written advice from the NASD that they would permit this payment to be made.

Q And that was -- was that the reason for suggesting that thefunds be put in an impress account?

A Absolutely.

Q Now, during these discussions -- did Mr. Grant participate in these discussions?

A Yes.

Q Did he take a different view?

A I don't --

HEARING EXAMINER BLAIR: A different view from Mr. Cowett's?

MR. PHILLIPS: From Mr. Cowett.

A I don't recall, sir, but specifically -- what specific view he took,or any other person in the discussions took.

Q Do you recall Mr. Grant insisting in these discussions that if there are any questions raised about the fund's rights in this matter, that the doubt should

be resolved in favor of the Fund and its shareholders?

A I just don't recall.

Q The money was paid back --

A Yes, sir.

Q (Continuing) -- after these discussions; is that correct?

A Yes, sir.

Q And you testified that the money was paid back at the initiative of IPC management?

A Correct, sir.

Q And Mr. Grant was a member of the management at that time?

A Yes, sir.

MR. PHILLIPS: No further questions.

HEARING EXAMINER BLAIR: All right. At this time, let us go off the record for a moment.

(Discussion off the record.)

HEARING EXAMINER BLAIR: On the record.

At this time we will recess to reconvene promptly at 1:20.

(Whereupon, a luncheon recess was taken at 12:22 o'clock p.m.)

AFTERNOON SESSION

1:20 p.m.

HEARING EXAMINER BLAIR: The hearing will come to order.

Does the Division wish to note further appearance of counsel?

MR. LA PRADE: Yes. Mr. Stanley Sporkin, Asiciate Director for the Division of Trading and Markets in Washington, D.C. is now sitting at my left at the counsel table.

HEARING EXAMINER BLAIR: Very well.

I believe the next item is cross-examination by Mr. Dudley.

EDWARD M. COWETT

resumed and testified further as follows:

CROSS-EXAMINATION

BY MR. DUDLEY:

Q Mr. Cowett, you testified, I believe, yesterday, in selecting brokers to execute for FOF Prop.,IIT, and Regent, that the overriding policy was the policy of getting good execution.

Is that correct?

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A Yes, sir.

Q In this connection, do you recall that you testified that portfolio managers were given an opportunity

to comment upon the various brokers and services that they performed?

A Yes, sir.

Q Did any of those portfolio managers comment upon the services of Arthur Lipper Corporation?

A Yes, sir.

Q What did they say?

A Without exception they were more than satisfied with the service that was given.

Q Could you give us an example?

A Well --

HEARING EXAMINER BLAIR: You mean of the service or of the comments.

BY MR. DUDLEY:

Q Sample of the comments.

A From time to time, a particular account would be reassigned to a new broker or different broker. And invariably when an account was assigned away from the Arthur Lipper Corporation, there was an objection to it, and we had difficulty getting the portfolio managers to acquiesce in that reassignment away.

Q Well, did you yourself form an impression of the competency of the firm of Arthur Lipper Corporation to execute transactions?

Q What was the basis for that?

A Well, each day I would see the trade sheets for all of the funds, in all of the brokerage houses. I would review them not from the standpoint of selection of particular securities for particular portfilios, because that was not my function or expertise, but I would review them to see how the discussions had gone, to see how narrow a range a security might be bought or sold in, whether a block of securities would be sold at a constantly depressing price, or could be sold at or near market, before the sale was ordered.

And I can only say that in all of the reviews I had no reason ever to question an execution out of Lipper as opposed to occasional questioning out of other brokerage houses.

Q Mr. Cowett, when we talk-- when you speak of best execution, are you concerned with merely the price that the broker will charge as an agency commission?

A It is more or less standard, particularly when you are talking about New York Stock Exchange stocks.

Quality of an execution, depends upon the ability to buy the requested number of shares without forcing the stock up in price, or to sell the desired number of shares without forcing the stock down, because the range can be quite dramatic between a good and a bad execution.

Q Mr. Cowett, did you have a general awareness of the profitability of Arthur Lipper Corporation during the years 1967 and 1968?

A Well, I was aware it was an extremely profitable operation.

Q Did you ever discuss with Mr. Lipper the question of profitability?

A Mr. Lipper discussed it with me.

Q What did he say?

A He had some concern about the fact that based upon the volume of business that he was getting from the IOS Funds, and the amount of special services rendered and cost thereof, he was ending up with a profit which he believed or expressed to me as believing, was exorbitant, and he was concerned about ways that either IOS could benefit,or he could pass benefits on to IOS by performing more services or ways that he could in effect cut down his income by being able to pass on to the funds the benefit of the lower cost.

HEARING EXAMINER BLAIR: Do I understand that Mr. Lipper told you in substance or effect: I am making too much money?

THE WITNESS: That's right.

HEARING EXAMINER BLAIR: And I want to give it back to IOS?

THE WITNESS: That is correct, sir.

HEARING EXAMINER BLAIR: For the funds.

BY MR. DUDLEY:

Q Was that last answer on the record?

A Yes.

Q What did you say to Mr. Lipper?

A I was delighted by anything he could do, to perform more services, or to perform the services he was performing at a lower cost to the funds.

Q Could you describe briefly the services that Mr. Lipper was performing for IOS?

A The erection of the communication system that I referred to above-- before, in my testimony. That was a service that Mr. Lipper provided 90 per cent at his cost, and 10 per cent at the cost of IOS. This was pursuant to a determination by the New York Stock Exchange. That was one large element of the services that he was performing and maintaining.

A second element of the services that he was providing was to do the daily memo bookkeeping and pricing in connection with U.S. portfolios of the various funds.

HEARING EXAMINER BLAIR: Before it gets too far away, I want to pinpoint in time when Mr. Lipper advised you that his company was making an exorbitant profit from IOS business.

THE WITNESS: In late 1967 or early 1968.

HEARING EXAMINER BLAIR: In late 1967?

THE WITNESS: Early 1968, yes.

HEARING EXAMINER BLAIR: Did he at that time suggest that perhaps the give-ups should be greater?

THE WITNESS: No. The naswer to that one is no.

HEARING EXAMINER BLAIR: The reason I ask is because I am trying to reconcile that statement with the statement you made in regard to the letter, Exhibit 41, in which you requested Arthur Lipper receive $300,000, or that Arthur Lipper give up $300,000.

THE WITNESS: 350.

HEARING EXAMINER BLAIR: $350,000.

THE WITNESS: That's right.

As I stated earlier, that would have brought the give-up percentage from 50 per cent up to about 60 per cent.

HEARING EXAMINER BLAIR: Yes. But what I am trying to understand is why it was not until a year later that it was you in effect making that suggestion to Mr. Lipper, when Mr. Lipper a year before, had advised you his profits were exorbitant.

THE WITNESS: It was not a year before, it was about six months before that. That was in August, I believe.

HEARING EXAMINER BLAIR: Yes, that's right.

THE WITNESS: Now, actually what Mr. Lipper was referring to was a means whereby he could charge less on the over-the-counter business, which I testified earlier, or a means whereby he could within the rules of the New York Stock Exchange, provided more services either in the communications level or bookkeeping level or in an area where the stock exchange would consider it appropriate.

HEARING EXAMINER BLAIR: But at no time did he suggest the alternative which eventuated when you in August 1968 suggested, in effect, as you say, the give-up be 60 per cent rather than 50?

THE WITNESS: That is correct.

BY MR. DUDLEY:

Q Mr. Cowett, do you have an idea of the monthly cost of the communication network, between Arthur Lipper Corporation and IOS?

A Yes. At least as to certain specifics.

Q Could you state the cost of the telephone line, I believe you testified to, and the other services, other communication network that you testified to earlier?

A When the telephones were first put in, the charge that applied each month for the-- just for the pure existence of the direct line, New York to Geneva, wasabout $24,000 a month. That cost has since come down, as the

satellites have given more channels to Europe, and it is now down to $18,000 or $19,000 a month, for the line itself.

There would be a slightly higher charge on the line from New York to London and the line from London to Geneva, because of the terminus in London and the transfer point.

And as I stated, we paid 10 per cent of those and Mr. Lipper paid 90 per cent of those.

In addition, there were the open telexes; an open point-to-point telex runs about $6,000 a month.

There is the additional charge with respect to the maintenance of the facsimile equipment. I don't know how much that runs. But there are, I believe, at least four open telex lines, maintained in connection with the communications network, so that the total present charge for the four telexes and the two open lines, would be in the neighborhood of $70,000, $65,000.

Q Mr. Cowett, in connection with the method by which IOS executes transactions through Arthur Lipper Corporation, I believe you described at some length yesterday the mechanical means by which orders flow from overseas to Arthur Lipper Corporation.

Do you know whether the staff of the Securities and Exchange Commission was aware of this arrangement?

A Yes, sir.

Q How do you know that?

A As of when?

Q As of -- at or about the time of the settlement.

A Yes, sir.

Q Which I think was May of 1967.

A Yes, sir.

Q How do you know?

A Prior to the date of the settlement or the entry of the settlement, there were various specific memoranda submitted to the Commission's staff. These memoranda were worked out primarily by Mr. Haft, but I reviewed them, and was also involved in working them out. And by Mr. Lipper, since he was going to set p the mechanical system and he was consulted as to whether the mechanical system would work.

These memoranda were submitted only after literally maybe it would be an overstatement, hundreds of hours, but scores of hours of discussion with the staff, as to the mechanical means by which orders could be handled within the settlement order.

Q Do you recall who those discussions were held with, in the staff?

A Primarily Tom Ray, who was at that point spearheading the working out of the mechanics of the settlement.

Q Mr. Cowett, you testified also that IOS guaranteed a loan made by Guinnes-Mahon Bank to Michael Lipper, is that correct?

A Yes, sir.

Q Would you tell us why IOS, if you know, guaranteed the loan?

A It was important toIOs that Arthur Lipper Corporation, being the facility at which -- in which the entire crucial communications link was maintained, have sufficient net capital to meet the minimum capital requirements and stay in good standing.

When we understood that the subordinated capital which would be lent by Michael Lipper was necessary to secure a margin of safety on maintenance of the minimum capital, we were anxious to see that that subordinated net capital was made available to the firm and when Mr. Lipper asked us to provide the guarantee, we were more than happy to do it.

Q Was the loan subsequently repaid?

A Yes.

HEARING EXAMINER BLAIR: When was that loan again?

THE WITNESS: First segment of the loan, $500,000 of it, was in October or November of 1967. And then a second $500,000 making the aggregate indebtedness a million dollars,

was in 1968, and it reamained at a million dollars until the point it was repaid.

HEARING EXAMINER BLAIR: About when in 1968?

THE WITNESS: In the spring of 1968, I believe.

BY MR. DUDLEY:

Q Mr. Cowett, I have handed you several documents which have been entered into evidence as Division's Exhibits 29A through 29R.

I would ask you to refresh your recollection of those documents by perusing them.

A Yes, sir.

HEARING EXAMINER BLAIR: Proceed, Mr. Dudley.

Q I notice that there was a give-up instruction given to Glore Forgan, Bear Stearns & Company, Emanuel Deetjen & Company, and other firms.

Was there-- did there-- were these instructions followed?

A Yes, sir.

Q In other words, it is your testimony that these firms gave up in the over-the-counter-- in executing transactions in over-the-counter?

A Yes.

Q Mr. Cowett, did there come a time when IOS attempted to join the New York Stock Exchange?

A Yes, sir.

Q Would you tell us the circumstances under which an approach was made to the Exchange, if there was such?

A In the spring or early summer, I believe, of 1963, I became aware of the fact that as the IOS funds grew in size, there would be more and more commission business generated through execution of orders placed by these funds.

Since IOS was not a United States based firm I believed that a case could be made for either IOS or principal officers or directors of IOS taking an interest on a non-voting basis, in a New York Stock Exchange firm, and I requested a meeting with Mr. Bishop of the Exchange, and with other members of the Exchange staff to discuss this.

And there were such meetings held. I attempted to distinguish between the kind of situation that was obtaining to IOS and the kind of situation that obtained to a normal U.S. based financial institution. I thought it was a fairly good case.

Q What was the Exchange's views?

A Mr. Bishop and his colleages indicated they would take the matter under advisement and would get back to me to advise me of whether the distinctions that I pointed out were valid as far as they could see or not.

I subsequently heard from them or from Mr. Bishop and he advised me that the staff of the New York Stock Exchange

had determined that the rules of the Exchange precluding non-voting membership or non-voting stockholdings to firms like IOS in the United States or persons connected with such firms would be construed as pertaining to IOS as well.

I then insisted that the matter be submitted to the Board of Governors of the New York Stock Exchange for formal determination and that was done.

Q What was the result of that?

A A turn-down.

Q Now, I believe you testified earlier that you made some approach to the Pacific Stock Exchange to have IPC join the Exchange, is that correct?

A Not IPC, a subsidiary of IPC. An application was in fact filed and granted, subject to the normal posting period, when the February 1966 SEC order was entered and the Pacific Coast Exchange requested that the application be withdrawn.

Q Mr. Cowett, are you familiar with the manner in which executions can be effected in United States securities in Europe, and particularly with respect to Swiss banks?

A Yes, sir.

Q Would you tellus your experiences, if any, in that area?

MR. LA PRADE: I would object to that line of questioning because I don't know what it has to do with executions of transactions in the United States, which are the basis of the Commission's order.

HEARING EXAMINER BLAIR: What are you attempting to do?

MR. DUDLEY: I'm attempting to have the witness describe for us, if he will, if it is within his knowledge, the practice and custom of Swiss banks, where a, either a person in Europe is trying to buy securities, United States securities, either listed or over-the-counter.

HEARING EXAMINER BLAIR: So as to compare with the method used by IOS? In other words, I am trying to find out what relevancy the procedure of the other Swiss banks would have to do in thisproceeding?

MR. DUDLEY: I am trying to elicit that that could have been an alternative whichIOS could have used.

HEARING EXAMINER BLAIR: I will permit it.

MR. DUDLEY: Thank you.

THE WITNESS: The Swiss Bank Association has a policy which is, to my knowledge, with one exception, uniformly followed by all Swiss banks-- that policy is to charge for the account of the Swiss bank through which an order is placed, in addition to the regular commission charged by the U.S. brokerage firm executing the order, an

additional one-half of normal New York Stock Exchange commission. So that the customer ends up paying one and a half times the normal commission.

To my knowledge, the Swiss bank -

HEARING EXAMINER BLAIR: Are you speaking about a customer placing an order with a Swiss bank for effecting a transaction on the New York Stock Exchange?

THE WITNESS: Correct. To my knowledge, Swiss banks on occasion will share that extra one-half New York Stock Exchange commission with the customer placing the order or the manager for the customer, placing the order.

This knowledge is obtained because originally IIT, in accordance with the terms of its regulations and charter placed all of its securities orders through Credit Swiss in Zurich and Credit Swiss, for the first year of IIT's existence, was charging the 50 per cent extra of New York Stock Exchange commission rates.

At the end of 1961, when we saw how significant this charge to the fund could be, I headed a group going up to Credit Swiss, demanding at that time of Credit Swiss that this practice be stopped and that just normal stock exchange commission rates be charged.

Credit Swiss offered a 50 per cent rebate to IOS. We refused it. We almost ruptured our relationship

three months of argument, Credit Swiss waived their normal 50 per cent New York Stock Exchange commission rates, and to this day, have never charged an IOS fund any additional commission.

HEARING EXAMINER BLAIR: Do I understand that IOS pays Credit Swiss the normal New York Stock Exchange commission?

THE WITNESS: We pay Credit Swiss nothing. No commission. The only commission paid on orders placed through Credit Swiss or paid for by Credit Swiss is the commission paid to the United States executing broker.

HEARING EXAMINER BLAIR: They are ineffect doing it gratis now?

THE WITNESS: Yes, that's right. This I believe is the only exception of any Swiss bank.

BY MR. DUDLEY:

Q Mr. Cowett, I'd like to direct your attentaon to the qustioning of Mr. La Prade concerning the knowledge of the board of directors of Fund of Funds, of the practice which has been described in the hearings, whereby Arthur Lipper Corporation shared over-the-counter commissions with IPC. And ask you whether with respect to the Regency Fund, there was any-- Regent Fund, whether there was any discussion concerning this practice?

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A To my knowledge, there was not, but I was in

attendance at maybe a third of the board of directors' meetings, so I am not sure there wasn't any.

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Q Do you recall during that time who the members of the boards of directors of the Regent Fund were?

A There was a fluctuation in part. I can refer to some persons who were directors throughout the period.

There was Harold Crang, who was the senior partner. J. H. Crang & Company.

There was myself. There was a gentleman named Robert Fowler who was the head of the Canadian Paper Manufacturers Association or thePulp Manufacturers Association as well as a director of many other public companies.

There was Mr. Buhl from the IOS organization.

I would have to refresh my recollection by looking at the prospectus to give you additional names.

Q That is satisfactory, Mr. Cowett.

Now turning to IIT, I believe that is a trust, is it not?

A Thatis correct.

Q So it is managed by anorganization named IIT Management Company?

A That is correct.

Q And who is on the board of directors of that corporation?

A At which time, sir?

Q During the period 1967 to 1969.

A With the exception of two persons, I believe that

during that period the board was basically an inside IOS board. The two persons who were not within the IOS group on a full time basis were Bayette Notz. Mr. Notz is a Swiss private banker and Pierre Rinfret.

Q To your knowledge were the discussions of the board of directors of this corporation about the practice whereby over-the-counter give-ups were made?

A No, sir.

Q Now, before examining those documents which I have just handed you, which I believe are Division's Exhibits 41 and 42A, I would like to ask whether the directors of either Regent or IIT independently of board meetings may have been aware of the fact that over-the-counter give-ups were being made in the manner that has previously been testified to?

A I am sure that Mr. Crang was, for Regent. I can't indicate to my knowledge, any other director of either fund having independent knowledge.

Q Would you please examine Division's Exhibit 41?

A You gave me 42B, sir.

Q Excuse me.

A Yes, sir.

Q Would you review briefly what those documents and circumstances of those documents are -- I mean the testimony that you made, with respect to those documents --

BY MR. LA PRADE:

Q Now, you state you took your own counsel. What was your opinion concerning the legality of splitting over-the-counter commissions?

A Splitting over-the-counter commissions?

Q Giving up over-the-counter commissions.

A My opinion was that it was a proper practice, under the rules and regulations of both the NASD and Exchange, as they then existed.

Q How about under the Securities and Exchange Commission statutes and regulations?

A I always considered that if the SEC considered that there was anything improper about such a practice, they had independent means to cause the NASD or the Exchanges to change regulations.

This had been the practice of the industry for years.

MR. LA PRADE: I would like to have this document marked.

HEARING EXAMINER BLAIR: In substance, what you're saying is that you interpreted the New York Stock Exchange regulations and NASD regulations, and that, in your opinion, decided that if those regulations were subject to any criticism by the Securities and Exchange Commission, that something would have been done prior to the time that you would place your interpretation on the

Stock Exchange rules?

THE WITNESS: I could answer affirmatively with the addition of the one thing of industry practice over the years, which reinforced the interpretations of the rules.

MR. LA PRADE: At this time, I would like to have marked as Division's Exhibit 47, this item.

HEARING EXAMINER BLAIR: It will be identified as Division's Exhibit 47 for identification.

(Whereupon, at this time a document was marked Division's Exhibit 47 for identification, as of this date.)

BY MR. LA PRADE:

Q I call your attention to Page 2. I'm going to -- I'm putting in ink marks, and I want you to read the sentence between the ink marks on the exhibit, out loud, into the record.

HEARING EXAMINER BLAIR: Would you kindly indicate for the record where the ink marks begin and end, however?

MR. LA PRADE: Yes.

On the second page, in the ninth line, after the words "industry," the first ink mark, there's a bracket there which Mr. Cowett has just inked in, and the other bracket would end at the conclusion of the sentence, after the word "illegal."

HEARING EXAMINER BLAIR: Starts with the words

"in this connection," and ends with the word "illegal."

BY MR. LA PRADE:

Q Read that into the record, please.

A "In this connection, we consider it significant that 'give-ups' in the over-the-counter market have long been recognized to be improper and illegal."

Q Now, is there a date on that exhibit?

A July 18, 1966.

Q Does it show if that letter was circulated to any exchanges?

A Yes, sir. It does.

Q Was it circulated to the New York Stock Exchange?

A Yes, sir.

Q Now, were you aware of that document?

A No, sir.

Q Do you know whether or not that document received any press coverage?

A I don't know, sir.

Q Now, you're an expert in the securities field, are you not?

A Probably.

Q You have written a book?

A Yes, sir.

HEARING EXAMINER BLAIR: That's a self-serving statement. You have to qualify your experts.

Will the respondents concede that Mr. Cowett is an expert in the securities field?

Apparently no concessions.

MR. KLEINMAN: I don't think I'll make that concession.

HEARING EXAMINER BLAIR: Very well.

BY MR. LA PRADE:

Q Have you written a book on the securities -- in the securities field?

A I co-authored a book, yes, sir.

Q What was the name of the book?

A Blue Sky Law.

Q Who was your co-author?

A Lewis Loss.

Q Who is Lewis Loss?

HEARING EXAMINER BLAIR: I'll take official notice of that.

BY MR. LA PRADE:

Q Now, were you familiar with the Commission's mutual fund study, which was published in December of 1966?

A Yes, sir.

Q Did you have occasion to read any portions of it?

A Yes, sir.

Q Do you know whether or not there is any pronouncement in that document of the legality or illegality of over-the-counter give-ups?

A There are statements concerning over-the-counter give-ups which are, I would not say pronouncements, I would say characterizations.

Q Do those characterizations differ in any way from Mr. Pollack's characterization?

A Yes, sir.

Q In what manner?

A I find a certain presumptuousness in the comment of long being recognized to be improper and illegal, with respect to a practice that was going on daily, and had been going on daily for the life of the securities industry, as I have known it.

Q With respect to the statement, the substance of the statement, that they are illegal, was any -- was there any deviation from that statement, in the mutual fund study report, which was published in --

MR. KLEINMAN: Objection, your Honor.

Both documents speak for themselves.

HEARING EXAMINER BLAIR: Until you specify as to a particular date, it would be unfair to try to introduce evidence relating to what has been indicated as a long-standing recognition. If you have some informa-

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HEARING EXAMINER BLAIR: That the subject came up?

THE WITNESS: Some place.

HEARING EXAMINER BLAIR: Very well.

BY MR. LA PRADE:

Q Now, did you ever give any consideration to the possibility of returning to the FOF Prop. Funds or to the Fund of America or to the Regent Fund or to IIT all or a portion of the commissions that had been received by IPC or the Overseas Development Bank from Lipper and other brokers pursuant to directions from you in 1967?

A No, sir.

Q Why not?

A Many reasons.

HEARING EXAMINER BLAIR: Give us the prime reason.

THE WITNESS: I think there are three prime reasons.

HEARING EXAMINER BLAIR: Very well. Give them.

THE WITNESS: In the first place, to this date I am not convinced that there is any legal way in which commissions could be retained -- returned or paid over to a fund.

Secondly: Within the context of the industry that we deal with, which is overseas in Europe, we are the exception, in that we don't charge extra commissions, and we would -- we are, even today, treating the Fund more fairly

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than European funds generally do, because they end up taking extra commissions, and certainly in the arena and the mores of the place where we do business there would be absolutely no concept of giving back normal commissions that you may be able to benefit from.

Thirdly: Forgetting the standards and mores of the industry in which we exist as opposed to the U. S. industry, and forgetting the legalities of any return or rebate that might be made, the third matter is that from the standpoint of pure profitability of IOS I would oppose the return.

Q Now, did you consider at that time reducing the management fees of the investment advisers?

A No, sir.

Q Now, with respect to number one, where you stated that you didn't believe it was legal to return these fees to these funds, what is the basis for that -- your conclusion that it is not legal?

A I have been a practicing attorney for 16 years.

Q Did you have any discussions with Mr. Connell along this line?

A Yes.

MR. KLEINMAN: I suggest that the witness finish answering the question.

HEARING EXAMINER BLAIR: I thought that that

was the answer. That was the basis.

MR. KLEINMAN: Is that the complete answer?

THE WITNESS: No.

HEARING EXAMINER BLAIR: Very well. Continue.

MR. LA PRADE: I am sorry.

A I have been a practicing attorney for 16 years, or a member of the Bar for 16 years.

During that time I have had very substantial experience in the field of securities law, and in the representation of broker-dealers, and the representation of funds as well as the IOS complex.

I have read case law in this area, most recently the opinion of Judge Wydensky in the Fidelity Case.

To date, as the law exist, and the regulations of the exchanges exist, as the regulations under the laws exist I see no legal basis for returning money to a client.

Q Did you have any discussions with Mr. Conwell along the lines of returning -- reducing the management fees?

A No, sir.

Q Did you have any discussions with any attorneys in the IOS complex along these lines?

A No, sir.

MR. LA PRADE: I have no further questions.

MR. PHILLIPS: I have a few questions.

HEARING EXAMINER BLAIR: Mr. Phillips.

Corporation?

A Yes.

Q Can you tell us when you first heard of Investors Planning Corporation?

A No, I don't recall the exact date on that.

Q Have you ever executed any transactions -- I'll withdraw the question.

Have you ever conducted any business for Investors Planning Corporation?

HEARING EXAMINER BLAIR: When you speak of you, are you referring to the firm?

Q The firm of Glore, Forgan.

A We may have, as a broker. For its affiliated fund, which I believe was the Fund of America.

Q Have you ever remitted any give-ups to Investors Planning Corporation?

A Yes.

Q Can you tell us when that first occurred?

A Well, I would, here again, I'm confused with '66, '67 or '68, but in that period, when we were doing a regular business with them, we did come up on instructions, send give-ups to IPC.

Q Now, you say when you were doing regular business with them. Would you identify for the record --

A By them I mean the IOS group.

HEARING EXAMINER BLAIR: Those were give-ups on IOS transactions which were directed to IPC?

THE WITNESS: Well, here again, when we say IOS transactions, you mean affiliated funds?

HEARING EXAMINER BLAIR: Yes. Douglas Fund or other funds controlled by IOS.

THE WITNESS: Right.

On over-the-counter trades.

BY MR. LA PRADE:

Q Now, can you tell us how these instructions were relayed to you, the instructions to give up to IPC?

A Well, certainly we had the instructions, and whether they were oral or by letter, I don't recall at the moment.

MR. LA PRADE: At this I'll have Exhibit -- I guess the next exhibit number, Division's Exhibit 74, marked for identification.

Mark this Division's Exhibit 74-A, two pages. One is an April 12th, 1967 check, in the amount of $3,200, made payable to Investors Planning Corporation of America, by Glore, Forgan & Staats.

(The above-described document was marked Division's Exhibit 74-A for identification.)

MR. LA PRADE: Exhibit 74-B would be a letter

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CROSS EXAMINATION

BY MR. DUDLEY:

Q Mr. Smith, how long has the firm of Glove, Forgan been in business?

A Well, I assume you mean Glove, Forgan & Staats? I think it dates from 1885.

Q How long have you been in the securities business?

A Off and on, allof my adult years.

Q During the --

HEARING EXAMINER BLAIR: Approximating 30?

THE WITNESS: Approximately 30 years.

BY MR. DUDLEY:

Q During the period 1967 and 1968, was it the standard practice of Glove, Forgan, to charge full stock exchange commissions on agency trades, involving over-the-counter securities?

A Yes.

Q Was it also the policy of your firm during this period, to honor customer-directed giveup instructions on all over-the-counter trades?

A Well, they didn't pertain to all over-the-counter trades we did, but there were many trades where we did not have customer instructed giveups, but where we did have customer-directed giveups, it was customary to accommodate them.

PROCEEDINGS

HEARING EXAMINER BLAIR: The hearing will come to order.

MR. DUDLEY: Respondent will call as their first witness, Arthur Lipper III.

HEARING EXAMINER BLAIR: Are you calling him only on behalf of Respondent Lipper and Lipper Corporation?

MR. DUDLEY: That's correct.

HEARING EXAMINER BLAIR: Very well.

Raise your right hand.

Do you swear the testi mony you are about to give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

MR. LIPPER: I do, sir.

HEARING EXAMINER BLAIR: Please be seated.

Whereupon,

ARTHUR LIPPER III,

called as a witness on behalf of the Respondent Arthur Lipper Corporation, having been first duly sworn by Hearing Examiner Blair, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. DUDLEY:

Q What is your full name?

A Arthur Lipper III.

Q What is your address?

A My business address is 140 Broadway, New York City.

Q Are you a Respondent in this proceeding?

A I am.

Q What is your occupation?

A An investment broker.

Q What positions do you hold in the Respondent Arthur Lipper Corporation?

A I am Chairman, President, Treasurer, Chief Executive Officer of Arthur Lipper Corporation.

Q That's Chairman of the Board of Directors; is that correct?

A That's correct.

Q In what business is the Respondent Arthur Lipper Corporation engaged?

A Arthur Lipper Corporation is a member of the New York Stock Exchange, American Stock Exchange, most of the regional stock exchanges, member of the NASD, and is engaged generally in the business of transacting security transactions for institutional clients.

Q Do you do any retail business in securities?

A Almost none at all.

Q Do you distribute the shares of any mutual funds?

A We do not.

Q Now, other than the institutional brokerage business, do you have any other businesses at Arthur Lipper Corporation that you engage in?

A The Corporation engages in financial research and publishing businesses in that it sells the products of the output of the research effort.

It also is engaged in research and the sale of research output in the areas of natural gas and oil exploration programs.

The principal business of the Corporation is the -- involves the transaction of securities.

Q What was the net worth of Arthur Lipper Corporation as of July 31, 1970?

MR. LA PRADE: I object to that question.

I think that the -- I have sat by as Mr. Dudley has been asking questions, and it seems to me that we're getting into what Arthur Lipper is doing presently.

I think the charges here concernn what Arthur Lipper was doing in 1967 and 1968.

HEARING EXAMINER BLAIR: What he is doing presently gives me an idea of his background and credibility with respect to all other matters that he testifies to.

Overruled.

MR. DUDLEY: Was there an answer to the last question?

HEARING EXAMINER BLAIR: I don't believe so.

MR. DUDLEY: Would you read the last question, Mr. Reporter?

(Whereupon, the pending question was read back by the reporter.)

A Something in excess, on a consolidated basis, of $14,000,000.

Q How many people does Arthur Lipper Corporation employ?

A Approximately 240, 250.

Q Could you describe the institutional trading department of Arthur Lipper Corporation?

A In physical terms?

Q And personnel.

A The transactions department of Arthur Lipper Corporation is housed in a room somewhat larger than this.

HEARING EXAMINER BLAIR: Indicating a room approximately 60 to 70 feet long and about 40 feet wide.

THE WITNESS: Yes.

A (Continuing) -- On the 38th floor of 140 Broadway where there are many Telex and machines, pieces of electronic equipment, and roughly 15 individuals employed.

Q Now, who is the head of the institutional trading department?

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HEARING EXAMINER BLAIR: Presently?

MR. DUDLEY: Presently.

A Presently, Mr. Peter Toccek, T-o-c-c-e-k.

Q What was his experience prior to coming with Arthur Lipper Corporation?

A Immediately prior to coming with Arthur Lipper Corporation, Mr. Toccek was employed by Neller & Company, a member of the New York Stock Exchange.

Prior thereto, he was employed by a number of other firms, including Soloman Brothers, F.M. Mayer & Company, Merkin & Company.

Q Is Arthur Lipper Corporation registered with the SEC as a broker-dealer?

A It is .

Q Is it registered with the Securities and Exchange Commission as an investment adviser?

A It is.

Q And is Arthur Lipper Corporation a member of the NASD?

A It is.

Q How many registered representatives does Arthur Lipper Corporation have?

A They have approximately 10 individuals who have passed the registered representative examination and are registered.

However, we only have three individuals,

including myself, who function as registered representatives.

Q Does Arthur Lipper Corporation have any operating subsidiaries?

A Yes, it does.

Q Would you describe those for us?

A Arthur Lipper S.A. Geneve is a wholly owned subsidiary operating in Geneva, Switzerland, with services to European accounts of Arthur Lipper Corporation.

It, in turn, has a wholly owned subsidiary, Arthur Lipper London Ltd., which services accounts in the United Kingdom.

Further, Arthur Lipper Corporation owns all of the stock of Resource Programs Institute, Inc., whose principal activity is research and publication of findings as regarding oil and gas programs.

Those are the principal subsidiary operations of Arthur Lipper Corporation.

Q How long has Arthur Lipper Corporation been in business?

A Since March of 1967.

Q Prior to becoming president of Arthur Lipper Corporation, what was your occupation?

A I was partner in charge of the institutional accounts at Zuckerman, Smith and Company, members of the New York Stock Exchange.

Q How long were you employed at Zuckerman, Smith & Company?

A Approximately four years.

Q Prior to your employment at Zuckerman, Smith, where were you employed?

A F.L. Rossmann & Company, members of the New York Stock Exchange.

Q And prior to that?

A Courts & Company, members of the New York Stock Exchange.

Q And prior to that, did you have employment in the securities industry?

A Yes, sir, with Goodbody & Company, members of the New York Stock Exchange.

Q Could you give us an idea of how many years you have been employed in the securities industry?

A Approximately 16.

Q Of those 16 years, how many years have you been engaged in servicing institutional clients?

A About 12.

Q And were those institutional clients generally mutual funds?

A Primarily.

Q While you were a partner of Zuckerman, Smith, did that firm engage in security transactions with investment

companies managed by companies affiliated with Investors Overseas Services?

A It did.

Q Were the IOS related companies your accounts at Zuckerman, Smith?

A They were.

Q When did you begin to handle these accounts?

A In 1964. At sometime in 1964 we would have received our first order from an IOS related fund.

Q Could you describe the circumstances under which you came to handle these accounts at Zuckerman, Smith?

A The basis for my handling the accounts at Zuckerman, Smith, was that it was I who introduced the account to Zuckerman, Smith as being an institution -- I was responsible for all institutional accounts.

Q How did it come about that you were the one that introduced the account?

A Because I had visited with the investment department of IOS in Geneva in 1963, and they had agreed to purchase from Zuckerman, Smith a financial advisory service that I was publishing in return for commissions.

Q Who did you speak with at that time?

A Mr. Dennis Savares was the first individual I met at IOS.

Subsequently, his superior, Mr. Henry Buhl.

Q When did you meet Mr. Cornfeld?

A Sometime late in 1964.

Q Under what circumstances?

A Mr. Buhl introduced me during one of my visits to Geneva.

Q Who was Mr. Buhl, in what positions did he hold with IOS atthis time?

A Mr. Buhl was --

HEARING EXAMINER BLAIR: Now, you mean?

MR. DUDLEY: I am sorry; at that time that you were speaking with Mr. Buhl.

A Mr. Buhl was the senior investment officer of -- as far as I knew -- all of the funds at thattime.

Q When did you meet Mr. Cowett?

A After -- sometime after meeting Mr. Cornfeld.

Q Under what circumstances?

A At a meeting in Geneva, I believe, with Mr. Cornfeld and Mr. Buhl.

Q Now, why did you terminate your association with Zuckerman, Smith and form Arthur Lipper Corporation?

A Because Zuckerman, Smith and Company had been afforded an economic opportunity, which in their declining, I thought that I could benefit from.

Q What was that economic opportunity?

A The suggestion by IOS that Zuckerman, Smith and

Company establish a Geneva and London office to service the IOS related accounts in 1967.

Q Do you know why Zuckerman, Smith declined the offer?

A The partners told me that it was because they had no experience in the managements of foreign branches and that they preferred to remain essentially a retail-oriented specialist firm on the New York Stock Exchange.

Q Did Mr. Cowett, Mr. Cornfeld or anyone associated with IOS have any financial interest in Arthur Lipper Corporation when it was formed?

A They did not.

(Continued on the next page.)

Q Subsequent to the formation of Arthur Lipper Corporation, did Mr. Cowett, Mr. Cornfeld or anyone associated with IOS acquire any financial interest in Arthur Lipper Corporation?

A They did not.

Q Are there any understandings --

HEARING EXAMINER BLAIR: Are you referring to an equity or debt interest, because I understood from previous testimony that there was a creditor interest because of various transactions which naturally arised in the brokerage commissions.

Excluding those, I assume.

MR. DUDLEY: I mean any financial interest in Arthur Lipper Corporation. I think at a later time --

HEARING EXAMINER BLAIR: You mean the profits, or the return on investment as opposed to Arthur Lipper Corporation owing the money at various times?

MR. DUDLEY: Well, I think the testimony was that Arthur Lipper Corporation obtained a loan from Michael Lipper.

I think we can clarify this through the testimony of the witness.

HERRING EXAMINER BLAIR: Very well.

MR. LA PRADE: I think we ought to have a definition of what he means by financial interest.

HEARING EXAMINER BLAIR: As I understood it, there

is a continuing course of business with various IOS subsidiaries, between Arthur Lipper Corporation and IOS affiliates; is that correct?

MR. DUDLEY: Right.

HEARING EXAMINER BLAIR: Now, in the course of that Arthur Lipper Corporation at times came to owe moneys to various affiliates, for instance, in give-ups or otherwise.

Isn't that true?

MR. DUDLEY: No. It's not true.

Could I ask the witness to explain what he understood when I said financial interest?

HEARING EXAMINER BLAIR: Yes. Sure.

THE WITNESS: There has been at no time an interest in the profits of Arthur Lipper Corporation by any of the individuals you named, or IOS, or any affiliated company of IOS.

MR. LA PRADE: This is the problem I have. I think we have testimony here that Mr. Cowett gave that they had an interest in seeing that Lipper met the net capital requirements. If Mr. Lipper did not meet the net capital requirements, since he was executing transactions for them, they felt obligated to put in orders enough -- enough to keep the entity going.

HEARING EXAMINER BLAIR: To direct moneys into it. I am not sure that they put money into it.

They were interested in keeping Lipper Corporation,

as I recall, in financial compliance.

However, with the limitation which Mr. Lipper has placed upon his understanding of the question, I will allow it.

On cross-examination you can go into the aspects that you want to.

BY MR. DUDLEY:

Q Are there any present understandings or arrangements whereby Mr. Cowett, Mr. Cornfeld or anyone associated with IOS will in the future acquire any financial interest in Arthur Lipper Corporation?

A There are none.

MR. LA PRADE: I object to that.

HEARING EXAMINER BLAIR: There again financial interest is limited to an interest in the profits or equity of Lipper Corporation?

MR. DUDLEY: Yes.

HEARING EXAMINER BLAIR: Very well.

A There are none.

Q Who are the present stockholders of Arthur Lipper Corporation?

A Myself, my wife, and those serving as officers and directors of the corporation; full-time employees of the corporation.

Q Other than these persons, are there any persons

who ever held stock of Arthur Lipper Corporation, either of record or beneficial owners?

A Yes, there are.

Q Who?

A Mr. Paul Yednak, Y-e-d-n-a-k, and Mr. Mullins, both of whom had been very minor stockholders at a time when they were our floor representatives.

Upon leaving, the firm buys back the stock. They were at that time full-time employees.

Q At the time you were forming Arthur Lipper Corporation, did Mr. Cowett, Mr. Cornfeld or anyone associated with IOS loan you or Arthur Lipper Corporation any money for the purpose of establishing Arthur Lipper Corporation?

A They did not.

Q When you formed Arthur Liper Corporation, did you assume the IOS related investment companies would transfer their accounss from Zuckerman Smith to Arthur Lipper Corporation?

A I did.

Q What capital expenditures did you make in connection with the formation of Arthur Lipper Corporation?

A The purhase of a membership on the New York Stock Exchange.

Q What did that cost?

A $305,000, and the expenses necessary to establish

an office.

Q What were these expenses in general terms?

A Furnishing, the furniture for the office, computer, the acquisition of a computer; the establishment of trading transactions department; the acquisition of the foreign offices, the furnishing of the foreign offices; the establishment of the communications system.

All those expenses which are required in the establishing of a business.

Q Can you state the percentage of gross income of Arthur Lipper Corporation which originated from IOS during the present year?

HEARING EXAMINER BLAIR: You mean calendar year?

MR. DUDLEY: During 1970.

HEARING EXAMINER BLAIR: That's the nine months?

MR. DUDLEY: Yes. The nine months.

HEARING EXAMINER BLAIR: Very well.

MR. LA PRADE: I will object to that question. I don't think it has any relevancy to the charges here.

HEARING EXAMINER BLAIR: Overruled.

A It would be about 50 per cent. Perhaps a little less than 50 per cent.

Q Could you estimate what that percentage was in 1967 -- excuse me -- in 1969?

A I would guess about 70 per cent.

* * * * * * * * * * * * * * *

HEARING EXAMINER BLAIR: You mentioned that if Arthur Lipper executed, it would give up to the other prime broker.

THE WITNESS: That is --

HEARING EXAMINERBLAIR: Is that correct?

THE WITNESS: We would give up the whole trade, the floor ticket.

HEARING EXAMINER BLAIR: The floor ticket?

THE WITNESS: Right. And we would subsequently bill them back for floor brokerage, but more, as during most of this period, up to the present, we prefer to use $2 brokers than our own broker.

Somebody else would have billed for the floor brokerage.

HEARING EXAMINER BLAIR: When you turned it over to the firm broker for execution, was there any give-up to Arthur Lipper?

THE WITNESS: No. In no -- on no occasion in these transactions would there have been any income to Arthur Lipper, except in the rare instance where we would have used our own floor broker. But that would have been very rare.

BY MR. DUDLEY:

Q Would you describe some of the services which Arthur Lipper Corporation performed for IOS, or the IOS related funds?

MR. LA PRADE: What time period are we in now?

MR. DUDLEY: During the time period 1967.

A Let's start with the mechanical services, because they're easier to describe.

First, you have the establishment and maintenance of the communication network, which entailed the designing of the system, the leasing of the lines, the creation of the offices, the manning of the offices.

Then you have the creation of an execution department with highly trained and experienced personnel, to handle the executions and give the best quality execution that we could achieve.

Then you have the question on a daily basis of the American portfolios of the various funds.

You have the investment memoranda bookkeeping-type procedure where the Arthur Lipper Corporation is involved with the delivery instructions to the banks, and the general relationship with the custodial banks, as it effects dividends.

You have the maintenance of overall observation or supervision of the other prime brokers to be certain that the quality of execution was that comparable to the standards that had been set.

You have the rendering of research and advice, primarily as relating to investment management companies, investment management personnel.

You had a general research capability which was used not in the affirmative making of investment recommendations, but rather in the checking of stories which some other broker had given the investment management department.

They would come back to us and say we checked this out to see, and would you check this out to see if it makes sense.

These generally would be the services.

Q What is your understanding of the term "give-up," as it is used in the securities industry?

A As it is used popularly, it is commission sharing between two firms qualified to share commissions with one another.

Q You say used popularly. What do you mean?

A Well, the real meaning of the term is as was described before in the case of a -- the giving up of a floor ticket. This is from whence the term comes, which may or may not entail commission sharing.

But as is generally known, and as we are using the term here, I am certain, it is commission sharing between qualified parties.

Q In your experience --

MR. LA PRADE: Well, I am going to object to that answer. I move to strike the word "qualified."

HEARING EXAMINER BLAIR: This is his interpretation

and understanding, that he has asked about at all, Mr. LaPrade, not your understanding, nor the one that I might understand, when the term was used by others, who had a different definition for the term.

MR. LA PRADE: His statement is, as it's generally known.

HEARING EXAMINER BLAIR: This is his understanding, that's all you can ask for. Overruled.

BY MR. DUDLEY:

Q In your experience --

HEARING EXAMINER BLAIR: Let me ask you, what, if commissions were split between unqualified persons, what would you consider that to be?

THE WITNESS: Rebates.

HEARING EXAMINER BLAIR: Rebates, all right.

BY MR. DUDLEY:

Q In your experience, what was the range of the percentage amounts of a commission a customer would direct a broker to give up?

A Anywheres from 20 to 80 per cent.

Q What would be the range in the mutual fund industry?

A The broad range would be anywheres from 20 to 80 per cent.

Q What did most funds -- what was the percentage

which most funds directed a broker to give up?

A The average would have been about 60 per cent.

Q Now, on December 5, 1968, the New York Stock Exchange prohibited all forms of customer-directed give-ups, is that correct?

A That is correct.

Q Did other exchanges follow the New York Stock Exchange, and also adopt rules banning such give-ups?

A They did.

Q Prior to the ban on give-ups, what is your impression of the extent to which customer-directed give-ups were engaged in, by mutual funds?

A Almost universally.

Q When did you become aware that customer-directed give-ups were prevalent in the mutual fund industry?

A In 1958 when I first started trying to sell to mutual funds.

Q Where were you employed in 1958?

A That would have been Courts & Company.

Q While you were a partner of Zuckerman Smith, did that firm give up commissions at the instructions of the customer?

A It did.

Q Did customers direct Zuckerman to give up commissions on transactions on the New York Stock Exchange?

A They did.

Q Did customers direct Zuckerman to give up commissions on transactions in the over-the-counter market?

A I believe so.

Q When you handled the accounts of the IOS related funds, while you were a partner of Zuckerman, Smith, did the IOS related funds instruct Zuckerman to give up on the New York Stock Exchange, or in the over-the-counter market?

A They did.

Q Were those instructions followed?

A Certainly.

Q To your knowledge, was there ever a policy at Zuckerman, Smith which distinguished between give-ups in the over-the-counter market and give-ups on the Exchange?

A Not to my knowledge.

Q Did you retain counsel to assist you in the formation of Arthur Lipper Corporation?

A I did.

Q Who acted as your attorney?

A Allen F. Conwell, Willkie, Farr & Gallagher.

Q How did you come to retain Mr. Conwell?

A I had met Mr. Conwell some years before the formation of Arthur Lipper Corporation, and became impressed with his specific knowledge of the securities laws and the problems that I was certain I would have to contend with, in the entrance

into the securities business. And therefore, retained his services -- well, the services of the firm with which he was associated.

Q Now, in the frame of reference, in the period of time we are talking about, the early part of 1967, is that correct, when Arthur Lipper Corporation was being formed?

A Specifically, January and February of 1967.

Q During this time, did you have conversations with Mr. Conwell regarding the organization of Arthur Lipper Corporation?

A Certainly.

Q How would you characterize the number of times you may have met with Mr. Conwell, during this period?

HEARING EXAMINER BLAIR: You mean you want an estimate?

Q On a daily basis?

HEARING EXAMINER BLAIR: An estimate?

MR. DUDLEY: His estimate.

A Our relationship was one which required more than daily contact during much of the period..

I should say there was a great deal of contact with Willkie, Farr. Much of it with Allen Conwell. The complexity of establishing the firm was greater than that of a normal firm of -- beginning business as a member of the New York Stock Exchange, because it was immediately going to be

doing business in two foreign jurisdictions. And there were very complicated tax matters which had to be decided, and in this connection Willie, Farr was also used.

Q During your discussions with Mr. Conwell, did you discuss institutional brokerage practices?

A I am certain we did.

Q At the time Arthur Lipper was organized, did you and Mr. Conwell discuss that Arthur Lipper Corporation would participate in the practice of giving up commissions at the direction of a customer, both on the Exchange and in the over-the-counter market?

A I would assume that we did, but I do not recall specifically, as I would not have seen any real reason to.

(Continued on following page.)

Q Well, do you recall a specific conversation during this period of time?

A Not as you state the question, I do not recall.

Q Did you and Mr. Conwell ever discuss whether a distinction was to be made between customer directed give-ups on an exchange transaction as opposed to an over-the-counter transaction; if you recall?

A I know that at one point he had a series of discussions on this question, but it would not have been as you ask, at the formation of Arthur Lipper Corporation.

Q I understand.

A It would have been at a subsequent point.

Q I am relating to the early part of 1967 at this point.

A I doubt that -- I don't recall.

Q What was your understanding during this period early in 1967 of the customary commission charged by a member of the New York Stock Exchange when it instituted a transaction in the over-the-counter market on an agency basis?

A I know of no exception to the minimum New York Stock Exchange commission level at that time.

MR. LA PRADE: I object to that answer. I don't think it's responsive to the question.

HEARING EXAMINER BLAIR: Let me hear the question.

(Whereupon, the last question and answer were

read back by the reporter.)

HEARING EXAMINER BLAIR: It's responsive only by inference, Mr. Lipper.

Will you make a direct response to the question.

A My belief was that the New York Stock Exchange minimum commission is that which was directly charged.

HEARING EXAMINER BLAIR: In other words, that on the over-the-counter transactions brokers followed the minimum commission rate that was utilized in connection with the New York Stock Exchange transactions?

THE WITNESS: To the penny.

BY MR. DUDLEY:

Q Now, during this period of time did Mr. Conwell ever inform you that he had discussions with the Staff from the New York Stock Exchange concerning the practice of charging the standard New York Stock Exchange commission in the over-the-counter market; this is, again, in early 1967; if you can recall?

A I do not recall.

Q When in 1967 did Arthur Lipper Corporation begin to handle transactions for the IOS related funds?

A I would think it would have been on our first day in business.

Q Which would have been --

A Which would have been on or about April 1st of

1967.

Q Did Arthur Lipper Corporation receive written instructions from the IOS related funds concerning give-ups in the over-the-counter market?

A We did.

Q Who on behalf of the IOS related funds directed your firm to give up in the over-the-counter market?

A Edward M. Cowett.

MR. DUDLEY: Can I have these marked as Lipper's Exhibit C -- that would be Lipper's Exhibit C?

HEARING EXAMINER BLAIR: Lipper's Exhibit C, yes.

MR. DUDLEY: Mark this as C-1, C-2, C-3, C-4, C-5 and C-6 for identification.

(Whereupon, the above-mentioned documents were received and duly marked by the reporter as Lipper's Exhibits C-1 through C-6 for identification, as of this date.)

BY MR. DUDLEY:

Q Mr. Lipper, would you examine what has been marked as Lipper's Exhibit C-1, which I placed before you, and identify that document, please.

A It is a letter on the letterhead of F. O. F. Proprietary Fund Limited, 119 Rue Du Lusanne, Geneva, Switzerland, dated June 29th, 1967 addressed to Arthur Lipper

Corporation, 30 Broad Street, New York and signed by Edward Cowett as President of F.O.F. Proprietary Fund Limited.

Q Would you please identify Lipper's Exhibit C-2.

A A letter dated July 11, 1967 from IIT Management Company, S.A. --

HEARING EXAMINER BLAIR: You can omit the addresses.

THE WITNESS: Okay.

A (Continuing) -- addressed to Arthur Lipper Corporation, signed by Edward Cowett as -- on behalf of IIT Management Company.

Q Would you please identify Lipper's Exhibit C-3.

A Letter dated July 11, 1967 from Financial Institutions Management Company Limited to Arthur Lipper Corporation, signed Edward M. Cowett.

Q Would you please identify Lipper's Exhibit C-4.

A A letter dated March 15th, 1968 from Canadian Fund Limited to Arthur Lipper Corporation, signed Edward M. Cowett, Vice President.

Q Lipper Exhibit C-5?

A A letter from IIT Management Company dated March 15, 1968 to Arthur Lipper Corporation, signed Edward Cowett, Vice President.

Q Lipper Exhibit C-6?

A A letter from F.O.F. Proprietary Fund Limited dated March 15th, 1968 to Arthur Lipper Corporation from

Edward Cowett, President.

Q Are these the written instructions which you testified to earlier?

A They are, sir.

MR. DUDLEY: At this time I would move in evidence Lipper Exhibits C-1 through C-6.

MR. LA PRADE: No objection.

HEARING EXAMINER BLAIR: Lipper Exhibits C-1 through C-6 inclusive are admitted in evidence.

(Whereupon, the documents previously marked for identification purposes as Lipper's Exhibits C-1 through C-6 inclusive were received in evidence at this time.)

HEARING EXAMINER BLAIR: Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

BY MR. DUDLEY:

Q Mr. Lipper, I note that three of the letters are dated 1967 and three letters are dated 1968.

Can you explain why instructions were given again in 1968?

A Well, for one thing there were no instructions from Canadian Fund Management Company in 1967; that is, this letter only appears for the first time in '68.

HEARING EXAMINER BLAIR: That's Lipper Exhibit C-4 you are referring to?

THE WITNESS: Yes, sir.

A (Continuing) And on the other two, I can only assume that --

HEARING EXAMINER BLAIR: Don't assume.

Q Well, do you recall?

HEARING EXAMINER BLAIR: If you don't know, say so.

A As to why they were issued?

Q Yes.

A No. I do not recall specifically.

Q Thank you.

Did Arthur Lipper Corporation follow the instructions of its customers, the IOS Related Funds as reflected in Lipper Exhibits C-1 through C-6?

A We did.

Q During the period July 10, 1967 through August 30th, 1968 how much money was directed to IPC in the form of give-up checks?

HEARING EXAMINER BLAIR: By whom?

MR. DUDLEY: By Arthur Lipper Corporation.

A I believe the figure is something in the area of $1,400,000.

Q Do you recall receiving written instructions from

Mr. Cowett which increased the percentage of the commission Arthur Lipper Corporation was to give to IPC subsequent to the letters of -- designated as numbered Exhibits C-1 through C-6?

HEARING EXAMINER BLAIR: Are you asking now a question which specifically directs attention to a letter increasing the percentage in so many words?

MR. DUDLEY: Yes.

HEARING EXAMINER BLAIR: Very well.

A I recall a letter which would have had that effect or could have had that effect.

I don't recall the specific increase in percentages as being a part of that -- the text.

Q Do you recall what the letter instructed Arthur Lipper Corporation to do?

A It instructed -- the letter instructed Arthur Lipper Corporation to pay to IPC three hundred -- $350,000 in monies, which would have been generated from over-the-counter commissions.

Q Do you recall when this occurred?

A Not specifically.

Q Do you recall discussing these instructions with Mr. Cowett?

A Yes, I do.

Q What did you say to him and what did he say to

you regarding these instructions?

HEARING EXAMINER BLAIR: Well, first in point of time, would you relate it to whether the discussion took place before or after receiving the letter?

THE WITNESS: It would have been after receiving the letter, sir.

HEARING EXAMINER BLAIR: Very well.

A As I recall, the discussion would have -- the discussion took the form of my indicating that I felt this to be too much of an additional payment to IPC, because although I wanted to be of service and believed -- had had strong beliefs about the rate structure generally, I did not feel that more than half of the amount that Mr. Cowett was requesting should be sent out at that time based upon the commissions that had been received up until that point.

Q And what was that amount?

A $175,000.

Q And what amount did Arthur Lipper Corporation pay over to IPC?

A $175,000.

Q Now, who at Arthur Lipper Corporation is responsible-- was responsible during the period 1967 to 1968 for issuing these give-up checks to IPC?

HEARING EXAMINER BLAIR: You mean authorizing the payment?

MR. DUDLEY: Authorizing the payment.

Q Do you know who signed the checks?

A Any number of people could have signed the checks. Anything done would have been done -- anything done in the firm would have been done by my authority.

Q Yes. But who under your authority might have general responsibility for the area of the -- of seeing to it that the instructions of Mr. Cowett were followed?

A Mechanically?

Q Yes.

A That would have been Nancy Stuart who was and is executive vice president.

HEARING EXAMINER BLAIR: It would have been done only if you authorized the specific payment of $175,000?

THE WITNESS: No, sir.

HEARING EXAMINER BLAIR: In other words, this was not the routine payment?

THE WITNESS: Which is why I was aware of it.

HEARING EXAMINER BLAIR: And did you specifically authorize payment of that $175,000?

THE WITNESS: Yes, sir. I did.

HEARING EXAMINER BLAIR: And this is in contrast, isn't it --

THE WITNESS: Not the normal practice where I would have not seen or been aware of the checks that went out.

HEARING EXAMINER BLAIR: All right.

THE WITNESS: But everything that was done within the firm is done under my authority.

BY MR. DUDLEY:

Q During the period in the year 1967 did Arthur Lipper Corporation clear its own transactions in the over-the-counter market?

A Arthur Lipper Corporation cleared all of its transactions through Zuckerman, Smith & Company up until the 1st of November of 1967.

After November, 1967 some transactions were cleared through Lipper directly, and others were still continued to be cleared through Zuckerman, Smith.

I would doubt that Arthur Lipper Corporation cleared any of its over-the-counter transactions in 1967.

(Continued on next page.)

Q When a transaction was cleared through Zuckerman, Smith, did that firm retain a portion of the commission?

A They did.

Q What percentage; if you recall?

A Fifteen to 20 per cent.

Q And that would come out of the 50 per cent of the commission which you retained?

A That was out of the gross. Correct.

MR. DUDLEY: Could I have a few minutes, Mr. Examiner?

HEARING EXAMINER BLAIR: Yes. At this time--

MR. DUDLEY: I am going into another line of questioning.

HEARING EXAMINER BLAIR: At this time we will take a ten-minute recess.

MR. DUDLEY: Thank you.

(Whereupon, at ten-minute recess was taken at 10:21 o'clock a. m.)

(Whereupon, the hearing reconvened at 10:35 o'clock a. m.)

HEARING EXAMINER BLAIR: The hearing will come to order.

BY MR. DUDLEY:

Q To your knowledge, did you or any officer or employee of Arthur Lipper Corporation attempt to conceal the fact

that Arthur Lipper Corporation was giving up commissions to IPC at the direction of the IOS related funds?

A No, sir.

Q When you received these give-up instructions, from Mr. Cowett, were you aware of Mr. Cowett's official capacity with IOS and the IOS related funds?

A Yes, sir.

Q What was his capacity at that time, in 1967?

A Mr. Cowett was an officer and director of the funds for whom Arthur Lipper Corporation transacted business, as well as being a senior executive of the management companies of those funds, as well as being a senior executive of IOS, Limited, and a director of IOS,Limited.

Q Did you have any reason to believe that Mr. Cowett was not acting in accordance with the desires of the Board of Directors of IOS Management, Fund of Funds, IIT Management, or Regent Fund?

MR. LA PRADE: I am going to object to that question unless there is some foundation laid.

HEARING EXAMINER BLAIR: Yes. What's the relevancy?

MR. DUDLEY: I want to establish the authority of Mr. Cowett and whether this witness had any reason to question that authority.

HEARING EXAMINER BLAIR: Well, ask him that question,

not whether he was acting in the manner you specified in the question.

BY MR. DUDLEY:

Q Did you have any reason to question Mr. Cowett's authority?

A I did not.

Q Did you ever attend directors' meetings of Fund of Funds?

A Yes, sir.

Q For what purpose did you attend a Board meeting or meetings of Fund of Funds?

A I have been invited to attend a number of Fund of Fund Board meetings in the capacity of, one: An adviser on U. S. Mutual funds and mutual fund management companies at a time when Fund of Funds was a holder of registered investment companies and management companies, and more recently as one who has been in a position to advise and comment on the administration and coordination of the investment activities of Fund of Funds.

Q Would you have attended any Board meetings of Fund of Funds during the period 1967 and 1968?

A I would have.

Q Doyou recall any discussions at those meetings concerning the procedure whereby Arthur Lipper Corporation was issuing give-up checks to IPC?

A I do.

Q What was the discussion?

A There was a full discussion of the procedure whereby commissions were shared by IPC from Arthur Liper Corporation specifically regarding over-the-counter commissions, which were the only ones we could have shared with IPC, and the statement was made by Mr. Cowett to the Board that it was the policy of IOS to benefit wherever possible from the use of commissions to the extent that it did not represent a detriment to the funds managed by IOS affiliated companies.

Q Can you recall the specific date or month in which this Board meeting of Fund of Funds was held at which the discussion took place?

A A discussion of -- the discussion specifically to which I am referring, yes.

Q When did that occur?

A That was in February or March of 1968 in Alcapulco, Mexico.

Q Did there come a time when you discussed with Mr. Cowett your desire to expand the services provided to the IOS related funds by Arthur Liper Corporation?

A Yes. I had a number of such discussions with Mr. Cowett.

Q Do you recall when these discussions took place?

A The initial discussions would have been at a time

when as a partner of Zuckerman, Smith & Company I first obtained the account and would have continued through -- till a very recent date.

Q Now, in the course of your discussions with Mr. Cowett, what, if anything, was said about the profits earned by Arthur Lipper Corporation and other brokers as a consequence of the New York Stock Exchange commission rate structure?

MR. LA PRADE: I object to that question.

HEARING EXAMINER BLAIR: Let me hear the question.

(Whereupon, the pending question was read back by the reporter.)

HEARING EXAMINER BLAIR: What's the basis?

MR. LA PRADE: Well, it implies that the reason that he made these profits was because of the New York Stock Exchange commissions.

HEARING EXAMINER BLAIR: Now, this is what's being paid to him, the commissions, Mr. La Prade.

How else can he make a profit, except through those commissions?

I am just trying to understand your objection.

MR. LA PRADE: Well, the question implies that this is the Only source of the profit, and I don't think --

HEARING EXAMINER BLAIR: I didn't understand that being the only source, but there was a profit, apparently, from receiving New York Stock Exchange commissions.

MR.LA PRADE: Is that true, Mr. Lipper?

HEARING EXAMINER BLAIR: I mean, it is part of the income, certainly.

Overruled. You may answer.

MR. DUDLEY: Would you like the question read back, sir?

THE WITNESS: No. I recall the question.

A I have stated to Mr. Cowett on a number of occasions -- certainly a number during the 1967-1968 period,-- that I believed the level of profit as earned by a member of the New York Stock Exchange during a primarily institutional business was unconscionably high, and that in fact all commissions from institutions were negotiated, even though there was a minimum standard, the negotiation taking the form of the amount of service rendered, the amount of research, the quality of research, the amount of new issue allocation, the amount of bank deposits, the amount of insurance placed with the generator of the commissions, and that there should be opportunity where a broker who was receiving these profits could in effect give a benefit from these profits back to the institution by virtue of the amount of service he was willing to provide as opposed to the simple execution of an order. The commission is the same.

(Continued on following page.)

Q Do you recall Mr. Cowett's response to you in this conversation or series of conversations?

MR. LA PRADE: Can I get his answer re-read? I want to understand his answer.

MR. DUDLEY: Certainly.

(Whereupon, at this time, the witness' last answer was read back by the reporter.)

MR. DUDLEY: May I have the pending question, please?

(Whereupon, the pending question was read by the reporter.)

A Yes.

Q What did he say?

A Mr. Cowett favored the introduction of any services that we could provide that would be of benefit either to IOS or the funds managed by affiliated companies.

HEARING EXAMINER BLAIR: If I may interrupt you, in your previous answer, with respect to your conversation about the unconscionable profit, you made reference to the fact that althought the New York Stock Exchange had a minimum commission rate, it was subject to negotiations.

THE WITNESS: Effective negotiations, not practical negotiations.

HEARING EXAMINER BLAIR: Well, this is what I wanted to find out.

THE WITNESS: Not legal negotiations.

HEARING EXAMINER BLAIR: What is this that you meant?

Negotiation ordinarily means that while we have a fixed price, we can talk between ourselves to determine whether another price would be suitable to us.

Is that what you intended to convey?

THE WITNESS: No, sir. I was referring to the overall cost of transacting business, between a broker and a client, not as it related to a specific trade.

I can pay security analysts either $15,000 a year or $60,000 a year. Presumably, I'm offering a better service with the higher paid analyst.

And that's a form of negotiation, because I'm getting the same commission dollar on the 20,000 shares of steel.

HEARING EXAMINER BLAIR: But you're spending more.

THEWITNESS: But I'm giving more, or at least, attempting to give more for it.

HEARING EXAMINER BLAIR: In other words, what you meant is that the New York Stock Exchange commission rate was not subject to negotiation in the sense of changing your income, but was negotiation with respect to changing your expenses in performing services; is that you -- is that what you referred to?

THE WITNESS: That is correct.

HEARING EXAMINER BLAIR: Go ahead.

BY MR. DUDLEY:

Q During the course of these conversations with Mr. Cowett, do you recall what, if anything, was said concerning the relationship between the New York Stock Exchange commission rate, and those charges -- and those commissions charged by members of the New York Stock Exchange, in the over the counter market?

A I don't believe that that subject came up in that frame of reference.

Q Did Mr. Cowett ever request that Arthur Lipper Corporation do anything which you believed to be against the New York Stock Exchange or SEC regulations?

A No, sir.

Mr. Cowett was more sensitive, perhaps than I, to these areas, by virtue of his experience, as well as the whole IOS picture.

At no time did he make any request to me that I considered improper.

Q Are you aware of any occasions when other brokers tried to get the IOS related business?

A Yes.

It's a very competitive business. There has been, as long as I have known the account, to the present day, extreme competition from all brokers that I know of, who have an international or a foreign business, and many that have purely domestic operations.

Q Well, do you have an impression as to why you were successful in obtaining and -- in obtaining and retaining the IOS related business?

A I believe that it was because IOS wished to, when it became necessary to centralize --

MR. LA PRADE: I think I'll interpose an objection.

I think a more direct way would be to ask him if he was told anything why he was getting the business.

HEARING EXAMINER BLAIR: It appears speculative in the matter that you requested.

So re-phrase your question.

BY MR. DUDLEY:

Q Were you ever told?

A Yes.

I was told that IOS, at the time that it became necessary to centralize its business, wanted to do so with a firm where it would be a truly important account, and could get the full attention and service of that firm.

This would have been the case with Zuckerman, Smith and Company.

Q Mr. Lipper, going back to your conversations with Mr. Cowett concerning the services that you could perform for them, did you ever discuss with them whether it was possible for IPC or its parent company IOS to return commissions to the IOS related funds?

A No, sir.

Q Did you ever consider it your obligation to suggest to FOF, IIT management or Regent Fund, that these companies negotiate with IOS to reduce management fees?

A No, I did not consider that. No, sir, I did not. I did not consider that any part of my business.

In answer to the prior question, I must amend it. Had I believed that IPC were returning any portion of the shared commission to the fund, we would not have shared those commissions with IPC.

Q Why not?

A Because it was my understanding that this would have been a rebative practice, in which we would have been playing a role. Because the fund itself was not qualified to receive a portion of those commissions.

Q You say rebative practice. Would you explain what you meant?

A The sharing of commissions with a client not in accordance with the effective regulations.

Q What effective regulations?

A Those that I believe to be in effect at that time.

Q By some, some self-regulatory bodies?

A By either -- by any of the bodies with which we had to concern ourselves.

* * * * * * * * * * * * * * * * *

Q Do you recall when you may have had discussions with Mr. Conwell in this regard?

A It would have been during the subject period.

Q Well, would it be late in '67 or early -- perhaps early '68, to the best of your recollection?

A It would have most probably been in early '68, to the best of my recollection.

Yes, we did have these discussions.

Q What did Mr. Conwell tell you?

A That the sharing of commissions from transactions involving registered investment companies, was not unlawful.

HEARING EXAMINER BLAIR: May I hear the answer again, please?

(Whereupon, a portion of the record was read back by the reporter.)

BY MR. DUDLEY:

Q Did there come a time, Mr. Lipper, when Arthur Lipper Corporation made no charge with respect to transactions in the over-the-counter market, for registered investment companies?

A There did.

Q When did that occur, if you can recall?

A Well, that was in 1968. At some -- later in the year, I would have thought.

Q Did you discuss this matter with Mr. Conwell?

A Yes, I did.

Q What did he tell you?

A That I probably would have problems with the New York Stock Exchange, but that that was not unlawful.

Q During 1966, 1967 and 1968, were you personally aware that Fund of America was instructing brokers to give up commissions to IPC?

A No, sir.

Q Do you know Bernard Dishy?

A No, sir.

Q Do you know any person at the brokerage firm of Dishy, Easton?

A No, sir.

Q Do you know Mr. Carney, a partner of Hertz, Warner & Co.?

A No, sir.

Q Do you know anyone else at Hertz, Warner?

A No, sir.

Q Were you aware, during 1967 and 1968, of any arrangements between Dishy, Easton; Hertz, Warner and IPC, involving give-up practices?

A No, sir.

Q Do you know Raymond Grant?

A Yes, sir.

Q In what capacity?

A He was a senior executive of IPC. I think he's a lawyer.

Q Were you personally aware that during the -- at any time during 1967 or 1968, that IPC was sending your firm reports on commissions received by IPC, as a result of give-ups?

A Yes, sir.

Q Do you know why Mr. Grant sent you these reports?

A These reports related to shared commissions from regional exchanges, and came from Jefferies and Jablonski as well, and Grant had -- were sending the information to me so that we might monitor the information, collect it for Mr. Cowett, because it was my firm who knew what the transactions were on the regional exchanges, which would have generated the commissions, which were capable of being shared in the first place, whereas IPC was simply the recipient, and it was just part of the overall coordination service and function that we performed for Cowett and IOS.

Q Do you know Mr. Rosner?

A Yes, sir.

Q Who is he?

A Sidney Rosner is a partner of Rodenberg, Tallman & Co.

Q Do you recall that in 1967 you had discussions with Mr. Rosner concerning the purchase of Keystone Management

Company stock?

A Yes.

Q Would you describe that transaction to us and the role, if any, say by Arthur Lipper Corporation?

A Fund of Funds held a block of Keystone Management Company stock. Rodenberg, Tallman had a buyer, corporate buyer for that block of stock.

I don't recall if they came to me asking would Fund of Funds sell the stock, or if they went to Fund of Funds directly, and Fund of Funds related the answer back through Lipper Corporation, as to yes, we would sell the stock at the following price.

This was, as I recall, a matter which took two weeks of going back and forth on terms. And it would have been in that connection that I spoke to Rosner.

Q Did Arthur Lipper Corporation act as a broker in this transaction?

A No.

Q Did you receive any commission in connection with this transaction?

A No.

Q Mr. Lipper, were you ever associated with a company called Financial Institutions in Growth Fund?

A Yes, sir.

Q Would you please describe Financial Institutions

Growth Fund, and your association with that fund?

A Financial Institutions of Growth Fund was one of the original wholly-owned mutual funds, wholly owned by Fund of Funds, with the original five of the so-called proprietary funds.

I was a director of that fund, I believe since its inception.

There came a time when the president of the fund, Mr. Abe Bernstein, was advised that some conflict existed, and he should no longer be president of the fund, as he was the portfolio manager of the Fund of America at the same time.

On an interim basis, as it was felt the fund had to have someone to fill the role, I was asked to serve as president of the fund, which I did for a short period in 1966.

This was done with full approval, knowledge and approval of my partners at Zuckerman, Smith, and was consistent with New York Stock Exchange Regulations at that time.

Q Do you recall when you terminated your association with Financial Institutions Growth Fund?

A Well, it would have been -- my recollection is, it would have been the end of 1966.

Q Would you describe the circumstances under which you terminated? The reasons why?

A I would have -- Mr. Lawrence Grubb became the

president, or became the portfolio manager. My -- just at about the same time the fund would have gone out of existence, and would have become an account of the FOF Proprietary Fund Limited but I am not clear as to exactly the timing.

Q Who is Mr. Lawrence Grubb?

A An independent investment adviser.

(Continued on next page.)

Q Mr. Lipper, did there come a time when it became necessary for Arthur Lipper Corporation to raise additional capital?

A Desirable for Arthur Lipper Corporation to raise additional capital, yes.

Q When did that occur?

A Shortly after we began clearing for ourselves in the end of 1967, the beginning of 1968.

Q Would you explain the relationship, if any, between the fact that you began to clear for yourself and the need for additional capital?

A We were in a unique position, in that we had a large institutional client who was obliged to give us a significant amount of brokerage and did not have the ability of going to as many brokers as, perhaps, the account would have desired by virtue of the settlement order.

Although ours was a riskless operation from the standpoint of a provider of subordinated capital, in that we did not take any investment positions of our own.

We did not have a trading account, as we did not engage in underwritings, as we did not engage in commodities. We were purely a service organization.

Nevertheless, a large -- very large percentage of our business came from one account, which was a highly controversial account even then.

We had difficulty in finding sources of subordinated capital.

Q Did you ultimately find the source of subordinated capital?

A Ultimately we did.

Q What was that? Would you explain that transaction to us, please?

MR. LA PRADE: May I interrupt a moment, please?

I'd like to hear the beginning of Mr. Lipper's answer.

HEARING EXAMINER BLAIR: The last answer?

MR. LA PRADE: Yes, sir.

(Whereupon, the pertinent portion of the record was read back by the reporter.)

MR. DUDLEY: Would you repeat the last question.

(Whereupon, the pending question was read back by the reporter.)

A Yes. The source of, or the -- the source was my brother, A. Michael Lipper, for whom I arranged a loan from Guinness Nahon & Company, merchant bankers, London, England.

I should explain that there would have been no problem in my obtaining a loan directly for the purpose of relending it to the firm.

However, both Willie, Farr and our accountants advised me that because of my, at that time, 90-odd percentage

in the firm, that any moneys which I lent to the firm would most probably be deemed a dividend upon the repayment, and as the firm needed no money, in that it was not involved in principal activities, but only had a New York Stock Exchange requirement for the capital, it seemed foolish to run the personal risk of having a half a million dollars of ordinary income ascribed to me simply by the firm repaying the loan so I could repay someone else.

My brother, who was not a stockholder of the firm, but was an officer of the firm, did not have this tax problem. Therefore, I arranged for him to borrow the funds from Guiness Nahon, which were then lent to the firm.

Guiness Nahon & Company, in accordance with the Stock Exchange practice, raised any lien against the firm, but -- and restricted their recourse to my brother, Michael Lipper.

Q And IOS guaranteed the loan from Guiness Nahon to Michael Lipper?

A They guaranteed Michael Lipper's credit based upon the obligation of Arthur Lipper Corporation to Guinnes Nahon.

Q Do you recall when --

A They did not --

Q Excuse me.

A They did not guarantee Arthur Lipper Corporation. They guaranteed Michael Lipper's credit to Guinness Nahon &

Company.

HEARING EXAMINER BLAIR: Arthur Lipper Corporation was not obligated to Guiness Nahon, from what I understood you to say.

THE WITNESS: That's correct, sir. Arthur Lipper Corporation was obligated to pay Michael Lipper a half a million dollars.

HEARING EXAMINER BLAIR: Very well.

BY MR. DUDLEY:

Q Do you recall when Arthur Lipper Corporation obtained this loan?

A Early in 1968.

Q What was the amount of money?

A $500,000.

Q Was that later raised?

A That was later raised by another $500,000, covered similarly by the -- by IOS guarantee.

Q Do you recall how long the loan was outstanding?

A Until November of 1969.

Q Did there come a time, Mr. Lipper, when you attempted to lower the commissions charged by Arthur Lipper Corporation on over-the-counter transactions?

A Yes, sir.

Q When did that occur?

A In the spring of 1969.

Q What was your proposal?

A To charge the -- a flat per share rate of 6 cents per share on all over-the-counter transactions.

Q Is this with respect to IOS related funds only?

A No, sir.

Q For whom?

A For all clients of the firm.

Q Did you discuss this proposal with Mr. Conwell?

A Yes, sir.

Q Do you know whether Mr. Conwell discussed this proposal with the Staff of the New York Stock Exchange?

A I believe he did, yes.

Q Do you recall what, if anything, Mr. Conwell may have told you concerning the attitude of the Staff of the New York Stock Exchange concerning your proposal?

A They were unhappy about it.

Q Why was that?

A Because they felt that the charging of 6 cents a share could be rebative in that it did not represent a profitable level of transactions, and that we were doing business with the same accounts in listed securities, and that, therefore, there was some form of rebate, because we were not making as much money on the unlisted as we were on the listed.

Q Do I understand your answer to mean that if --

MR. LA PRADE: Well, I am going to object to that

question.

MR. DUDLEY: I haven't finished it yet.

HEARING EXAMINER BLAIR: Let the question be asked.

Q Do I take your answer to mean that the New York Stock Exchange felt that if you charged a client for whom you did business on the New York Stock Exchange 6 cents a share on over-the-counter market transactions, that you were in some way rebating the charge made on the New York Stock Exchange transactions?

MR. LA PRADE: I am going to object to that.

HEARING EXAMINER BLAIR: Overruled.

A That was their specific statement, that had we not done business with the same client on -- in listed shares, that they would have interposed no objection.

It was because we were doing both listed and unlisted business that they believed there was some sort of rebate.

HEARING EXAMINER BLAIR: You are saying that the effect of reducing the over-the-counter commissions would have the effect of averaging out all commissions if you were doing New York Stock Exchange business with the same person?

THE WITNESS: In the same number of shares.

HEARING EX AMINER BLAIR: If you lowered your OTC commissions?

THE WITNESS: Yes, sir, if we lowered our OTC commissions, exactly.

MR. DUDLEY: May I have just a second at this time, sir?

HEARING EXAMINER BLAIR: Yes.

(Discussion off the record.)

MR. DUDLEY: All right, I have no further questions, your Honor.

HEARING EXAMINER BLAIR: Thank you.

In accordance with our previous arrangement, we will take the luncheon recess and resume at 1:00 o'clock for cross-examination.

(Whereupon, a luncheon recess was taken at 11:30 o'clock a. m.)

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HEARING EXAMINER BLAIR: The hearing will come to order. You may proceed with your cross-examination, Mr. LaPrade.

MR. LA PRADE: Okay.

Whereupon,

ARTHUR LIPPER III,

resumed the stand and testified further on his oath as follows:

CROSS-EXAMINATION

BY MR. LA PRADE:

Q Now, Mr. Lipper, can you tell us in 1967 what percentage of the stock of Arthur Lipper Corporation you owned? Voting stock, that is.

A Voting stock of Arthur Lipper Corporation was owned by myself, to the extent of 94 per cent. Approximately 94 per cent in 1967.

Q Did that percentage remain constant throughout 1968?

A I believe it dropped to 92-1/2 per cent in 1968.

Q Currently, what percentage of the voting stock of Arthur Lipper Corporation do you own?

A Approximately 90 per cent.

Q Now, do you maintain any bank accounts with any ICS affiliated bank, in the United States or Geneva?

A No, sir, I do not.

Q Does your wife?

HEARING EXAMINER BLAIR: When you say you, are you referring to --

Q You personally.

A No, sir, I do not.

Q Does your wife maintain any bank account with any ICS affiliated bank?

A My wife has a small checking account with an ICS affiliated bank.

Q Do you maintain any accounts in any ICS affiliated banks, for any of your children?

A No, sir, I do not.

Q Do you have any -- do you personally have any loans with any ICS affiliated bank?

A No, sir, I do not.

Q Does your wife have any loans with any ICS affiliated bank?

A She does not.

Q You testified this morning that you were a partner of Zuckerman Smith, from 1963 through 1967; is that correct?

A That is correct -- no, sir, that is not correct.

Q When were you a partner of Zuckerman Smith?

A I became a partner of Zuckerman Smith, I believe, in 1966.

I was associated with Zuckerman Smith & Co. between 1963 and 1967.

Q Can you tell us what your functions were at Zuckerman & Smith in 1963 through 1967?

A Yes, sir.

I was manager of the Institutional Department of Zuckerman Smith & Co., for the entire period.

Q How many employees were employed in the Institutional Department?

A Three.

Q Who were those three employees?

A Myself, Nancy Stuart, and a secretary and/or draftsman.

Q What percentage of the overall business of Zuckerman & Smith, during the period from 1963 to 1967, consisted of business derived from institutional clients?

A In 1963, almost none at all. As of the last six months, that could be the last three months of '66 and the first three months of '67, a substantial portion.

Q Now, this substantial portion, was it derived from any one source?

A IOS was a large client of Zuckerman Smith. The Intitutional Department had other clients, institutional clients, as well.

Q What percentage of the institutional department

of Zuckerman, Smith -- I withdraw the question.

What percentage of the business done by the Institutional Department of Zuckerman Smith in 1966, derived from business originating from the IOS affiliated funds?

A 75 to 80 per cent.

Q You testified that while you were at Zuckerman, Smith, you believed the firm gave up on over-the-counter transactions originating from IOS affiliated funds, is that correct?

A That is correct, sir.

Q What is the basis for your belief?

A My recollection.

Q Were these orders executed by you?

A The orders would have come through the department for which I was responsible.

Q Right.

They would have come through you, and you would have directed them to the executing -- the order room, is that correct?

A That would be correct, sir.

Q During this period of time, 1966, did you execute or did you receive any orders from your other institutional clients, to give up on over-the-counter transactions?

A Not to the best of my memory.

Q You stated you became a partner in the firm of

Zuckerman Smith in 1966, is that correct?

A I believe so.

Q Did you, while you were a partner in the firm of Zuckerman Smith, receive any -- I will withdraw that question.

What was the policy of the firm of Zuckerman Smith, with respect to communications received from the SEC? Were they circulated to the partners?

A I am not aware of a formal policy. That which was deemed relevant, I am certain was circulated, but I am not aware of any formal policy.

Q Well, did you ever, in the course of your being a partner, on occasions did you ever -- were any SEC communications or releases directed to you?

A Yes.

Q How about with respect to -- well, was Zuckerman Smith a member of the New York Stock Exchange in 1966?

A Yes, sir.

Q With respect to communications issued by the New York Stock Exchange, were those directed to you?

A Those thought to be relevant, yes, sir.

Q Who would deem whether or not a communication from the SEC or the New York Stock Exchange, would be relevant to your position in the firm?

A It could have been anyone of a number of oth-

BY MR. LA PRADE:

Q Now, you testified this morning, that when you started your broker-dealer firm, you had an understanding that you were going to get business from IOS; is that correct?

A That is correct, sir.

Q Can you give us the basis of your understanding?

A The establishment of Arthur Lipper Corporation was an outgrowth of a suggestion made to me as a partner of Zuckerman Smith & Co., that Zuckerman Smith establish a Geneva and London office, to facilitate compliance with the settlement order.

Q This was a communication that was made to you from a partner of the firm of Zuckerman Smith?

A No, sir, from IOS.

Q IOS.

Who, in IOS?

A Mr. Cowett.

Q What did Mr. Cowett tell you?

A Mr. Cowett asked if Zuckerman Smith would like to open an office in Geneva and London, for the purpose of being the central coordinating agent for the handling of the flow of brokerage transactions.

I had assumed that Zuckerman Smith would welcome the opportunity.

In presenting the matter tothe partners of Zuckerman Smith, they subsequently informed me that they would prefer not to have the responsibility of foreign offices.

I then stated to them that I felt this was an opportunity that I would have to pursue for myself, would they help me establish the firm, would they clear for the firm, etcetera.

Q This is Zuckerman Smith, right?

A This is Zuckerman Smith.

They said yes, they would.

I reported back to IOS that Zuckerman Smith would not go forward and open foreign offices, but given the opportunity, I would be delighted to form a firm and open said offices, and that the clearance functions could be handled by Zuckerman Smith.

Q Now, was that Mr. -- were those Mr. Cowett's exact words; that you quoted earlier; a central clearance agency?

A No, sir, those would be min..

Q What were Mr. Cowett's words?

A I can't recall. This was almost four years ago.

Q Was there any understanding of -- prior to your commencing operations, was there any understanding between yourself and IOS, to the effect that specific business would

be directed through your firm?

A No, sir. There was -- Zuckerman Smith had been the prime broker for one of the proprietary funds -- on the proprietary funds, which, I guess, by that time was also proprietary fund account, namely National Institutions Growth Fund.

The assumption was that that would continue.

Q Wasn't it more than an assumption? Weren't you told it was going to continue?

A I don't think I can say yes to that, sir.

The assumption was that Arthur Lipper Corporation would be well compensated in brokerage for the expense and risk of establishing a business which was established at that time primarily to serve, or at least, in that form, primarily to serve one account.

There was no question in my mind that we would receive a very substantial amount of brokerage business.

Q Well --

A There was not an understanding in the sense that there was an agreement to give it to us.

Q There was no written agreement?

A Therewas no written agreement.

Q Wasn't there an oral agreement?

A I can only answer the question by saying that if they had, in May, after we were established, at the end

of March, decided not to give us another penny's worth of business, I would have been terribly disappointed, but would not have felt I had legal grounds to take an action, so I cannot agree that there was an agreement.

Q Could you have continued in business?

A With the size staff we had in May, yes.

Q Would you have started your own operation from March of 1967, if you did not expect to receive any of the IOS business?

A No, sir, I would not have.

Q Was there any discussion between yourself and IOS, as to specific dollar amounts of business that would be directed through your firm?

A No, sir.

Q Was there any discussions between you and anyone connected with IOS, prior to March of 1967, concerning the manner in which orders would be placed through your firm?

A I don't understand the question, sir.

Q Well, was there any discussion -- let me approach it this way:

When did you first receive orders from any IOS affiliated fund?

A I have already testified I think thatwould have been either on the day the firm began, or the following day.

Let's say April 1, April 2.

However they fell in the week.

Q All right.

Now, prior to April 1st and about April 1st, did you have any discussions with anyone at IOS concerning the amount of business that would have to be directed to your firm, in order for you to meet operating expenses?

A No, sir.

Q Were there -- in receiving the orders from IOS were you ever directed at April of 1967, to give up a portion of the commission?

A I do not recall whether I was directed. It was clearly my understanding that I would be required to give up.

Q What is the basis of that understanding? Was that as a result of any discussions you had with Mr. Cowett?

A I don't believe there were any specific discussions, but it was not only industry practice, but IOS practice.

Q What was the IOS practice that you knew of, at the time?

A To require brokers, executing orders, to share commissions with other brokers.

Q Now, did you know at the time the percentage of give up that IOS would usually require a broker executing a transaction on their behalf?

A Yes, sir, about 50 percent.

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was nouse to either funds, except through the purchase of research, but there was no possible advantage to IPC, IOS of the New York Stock Exchange generated commissions.

HEARING EXAMINER BLAIR: What your saying in that answer that you just gave, is that there is a tremendous amount of brokerage that IOS affiliates were not taking advantage of in the terms of getting give-ups or services, or just what is it?

THE WITNESS: That IOS had not direct -- no way of benefiting, nor did the IOS managed funds have any way of benefiting from these very large amounts of stock exchange commissions.

HEARING EXAMINER BLAIR: You're saying that they were entitled to benefit from it, is thatit?

THE WITNESS: Well, it's my belief that the commission rates, New York Stock Exchange commission rates, were at an unrealistic level, and that they certainly not have been as high as they were

HEARING EXAMINER BLAIR: Well, I'm still just trying to understand your last answer, when you said that there was a lot of brokerage that was going to waste or that no one wanted, could not use.

THE WITNESS: There was no utility for, within the IOS orbit.

HEARING EXAMINER BLAIR: Well, under the rules, IOS

when it wanted a transaction executed, had to pay a certain amount of commission.

THE WITNESS: Right.

HEARING EXAMINER BLAIR: So, after they paid it, under the rules they were entitled to nothing; isn't that right?

THE WITNESS: That's absolutely correct.

HEARING EXAMINER BLAIR: Then what is it that you meant by the answer to the question?

THE WITNESS: That there was no reason for giving it to any particular firm because it didn't benefit it, either IOS or the funds. These were just enormous amounts of money which, frankly, the brokers were not earning, or could not justify, in my opinion, and it was-- well, I can only say that if the transactionhad been done on a regional exchange then there was some benefit, at least IOS derived from the commissions.

HEARING EXAMINER BLAIR: You mean by reason of the commissions on the regional exchange?

THE WITNESS: Because theycould have been shared by IPC.

HEARING EXAMINER BLAIR: On over the counter or a member of NSD?

THE WITNESS: On regional as well.

HEARING EXAMINER BLAIR: On regional.

THE WITNESS: But the New York commissions could not be shared with anyone associated with IOS, and these were just big piles of money, sort of floating around.

HEARING EXAMINER BLAIR: There were large amounts of money that IOS couldn't reach because of the New York Stock Exchange Rules, is that it?

THE WITNESS: That's correct.

HEARING EXAMINER BLAIR: Okay.

BY MR. LaPRADE:

Q I take it your testimony is that you do notthink very highly of the New York Stock Exchange Commission Rate Schedule?

A I feel that the New York Stock Exchange Commission Schedule, as it existed in 1967, as well as -- well as it existed in 1967, was unrealistic and unfair and it related to the institutional investors.

(Continued on next page.)

Q Well, if this wasyour belief, whydid you use it in 1967 and '68 in executing transactions on behalf of IOS portfolio -- IOS affiliatedfunds in the over the counter -- I withdraw the question.

If this was your belief in 1967 and '68, why did you in executing portfolio transactions on behalf of IOS affiliated funds, in the over the counter market, charge the minimum New York Stock Exchange Commission?

A Because Iwas advised that I had no other choice.

HEARING EXAMINER BLAIR: Who advised you of that?

THE WITNESS: Mr. Conwell.

BY MR. LaPRADE:

Q Well, who was Mr. Conwell at this time?

You testified he was an attorney at Wilkie, Farr; is that correct?

A He still is, as he was.

Q He still is, right.

What was his affiliations with IOS, or any IOS fund, in 1966?

A I believe that he was a director of Fund of Funds and the law firm of Wilkie, Farr represented IOS in at least certain matters in the United States.

He was also a director, I believe, of one other fund, but I am not certain.

Q Now, can you tell us specifically when this con-

versation occurred, between yourself and Mr. Conwell, wherein he informed you that you had to charge the minimun New York Stock commission on over the counter transactions?

A The reason that I'm delaying, is that Mr. Conwell had his -- had an automobile accident almost immediately after the formation of the firm, the literal formation of the firm, and the conversations with Mr. Conwell were delayed for several months.

I cannot specifically recall thedates, Mr. LaPrade.

Q Well, can you specifically recall the year?

A Yes. I am of the distinct impressionit would have 1967.

Q Can you tell us what -- can you tell us what Mr. Conwell reported to you -- I withdraw the question.

Did he identify thepeople with whom he had discussed this, at the New York Stock Exchange?

A No, sir.

Q Let me ask you this: Did you present Mr. Conwell with the question that you wished to execute orders in the over the counter market?

A No.

Q Did you have any discussions -- how did Mr. Conwell did -- know that you intended or desired to execute portfolio transactions for IOS affiliated funds, at less than the New York Stock Exchange, commission in 1967?

MR. DUDLEY: Objection, yourHonor. I don't think that was his testimony.

HEARING EXAMINER BLAIR: It wasn't his testimony, but there is testimony to the effect that Mr. Conwell gave him advise with respect to the fact that the New York Stock Exchange commission schedule of minimum commission, should be followed on over the counter transactions, and, Mr. LaPrade, which I think is a fair question, is asking how did Mr. Conwell know you were interested in the answer to that question.

MR. DUDLEY: Well, could I just have the question read?

HEARING EXAMINER BLAIR: Sure.

(Whereupon, a portion of the record was read by the Reporter.)

HEARING EXAMINER BLAIR: I have rephrased the question, to simply ask, how did he know he was interested in the New York Stock Exchange view on that?

MR. LaPRADE: I can rephrase the question.

BY MR. LaPRADE:

Q Did you ever communicate to Mr. Conwell that you were desirous of executing portfolio transactions on behalf of Fund of Funds or any other IOS affiliated fund, at less, in the oer the counter, at less than the New York Stock Exchange commission?

A Yes, sir.

Q I take it this was at the time around Mr. Conwell's auto accident?

A I believe so, sir.

Q What did you tell Mr. Conwell?

A That -- I believe that I asked Mr. Conwell simply his opinion as to whether or not we were required or would be welladvised to follow the industry practice of charging the minimum New York Stock Exchange rates for over the counter transactions, as well as for listed transactions.

Q Now, in point of time, when did this discussion take place?

Did this discussion take place at the inception of your firm or did it take place subsequent to the commencement of business by your firm?

A Most probably subsequent.

Q Did it take place prior to your conversation with Mr. Cowett, that you testified about this morning?

HEARING EXAMINER BLAIR: Which one? There are a number of them.

MR. LaPRADE: Well, the one in which he represented to Mr.Cowett that he thought that the -- that the profit as earned by a member of the stock exchange was unconscionably high and that --

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HEARING EXAMINERBLAIR: All right.

A That discussion, or those discussions with Mr. Cowett,

preceded even the formation of offer with the corporation.

Q The ones that you testified about this morning?

A Yes. That was a running dialogue between Mr. Cowett and myself.

Q Now, do you ever recall having a conversation with Mr. Cowett, after you had been in business, in your own firm, of Arthur Lipper corporation, wherein you represented to him that you were making so muchmoney you didn't know what to do with it?

A There was a conversation which could be so characterized.

Q Right.

And do you recall when that conversation took place?

A I would think that particular conversation took placesomewheres around the fall of '67.

Q The fallof '67.

Do you recall what Mr. Cowett told you at that time?

A He told me nothing. We discussed --

Q Let's get your words. What did you tell him?

A That -- I reflected to Mr. Cowett that the rate of commission business coming to Arthur Lipper Corporation was such that I was anxious to find other services which we could perform in the rules, within theregulations of the New York Stock Exchange, for IOS, without charging a fee, or some

benefit that we could provide for the funds, as managedby IOS.

Cowett's reaction was positive. We discussed a number of possible services to the funds, and to IOS, additional communications facilities, additional use of the computer.

What else?

Q Well, did you have any discussion about decreasing or increasing the amount of monies you were giving up to IPC during this period of time?

A No. Not at that discussion.

Q Did you volunteer to give any money back to any of the funds?

A No, sir.

Q Did you discuss decreasing the charge that you were collecting for executing these transactions in the over the counter market, on behalf of the IOS portfolio -- IOS affiliated funds?

A Well, we were -- the answer would be no, because what we were retaining was about 30 percent of the gross commission.

Q Weren'tyou giving up 50 percent on over the counter transactions?

A Yes. And I was giving 20 percent to Zuckerman, Smith to clear the trade.

Q You were keeping 30 percent?

A That's about the way it broke down.

Q With that you were making plentyof money?

A That was -- that was profitable in and of itself, yes.

HEARING EXAMINER BLAIR: At this time we'll have a ten minute recess.

(Whereupon, at this time a ten minutes recess was had.)

(Continued on next page.)

HEARING EXAMINER BLAIR: The hearing will come to order.

BY MR. LA FRADE:

Q Now, you were talking about having to charge a minimum New York Stock Exchange Commission on over-the-counter transactions affected in 1967 and '68 on behalf of the IOS affiliated funds.

What, if any consideration did you -- I am sorry -- were you referring -- I will withdraw the question.

How did you execute these over-the-counter transactions on behalf of the IOS affiliated funds, as agent or principal?

A As agent.

Q Now, did you give any consideration to executing these transactions as principal?

A Yes, sir.

Q And did you determine -- did you, in fact, execute any on a principal basis?

A No, sir. At the outset in establishing Arthur Lipper Corporation we made several firm principles, one of which was that we would not deal with any client as a principal, which is the reason that we did not go into underwritings, and the reason that even at a time subsequent to that, which we are discussing, when we charged registered investment companies no commission, that we did that as agent

rather than as principal.

Q Why didn't you select other market makers to act as principal in these transactions?

A Because it's been our experience that market makers take unfair advantage of an institution when they, in fact, know that they're dealing with an institution.

Q Well, in executing your over-the-counter transactions on an agency basis, did you deal with the market makers in those instances?

A On occasion.

Q And during this period of time wasn't it common knowledge on the Street that you were IOS's broker in the United States?

A Yes, sir.

Q All right.

A But we always transacted business for a number of other people in the over-the-counter market, and frequently used third-party brokers in dealing with the market maker where we felt that was necessary to get the best execution.

Q Okay. Now, when Mr. Conwell advised you that you had to charge the minimum New York Stock Exchange commission on over-the-counter transactions executed on behalf of the IOS affiliated funds, did you complain of this to the Securities and Exchange Commission?

A No, sir.

Q And why didn't you complain to the SEC if you believed that the New York Stock Exchange Commission was unscionable?

A I have never viewed the Commission particularly sympathetic to the problems of IOS or Arthur Lipper.

Q Did Mr. Conwell ever report to you or identify those persons at the New York Stock Exchange that had given him -- I will withdraw that question.

Did Mr. Conwell ever indicate to you that he had discussed this matter with anyone at the New York Stock Exchange?

HEARING EXAMINER BLAIR: Which matter?

MR. LA PRADE: In 1967, the charging of less than New York Stock Exchange commission on over-the-counter transactions?

A No, sir.

Q He never identified the identity --

A No.

Q Did you ever visit the New York Stock Exchange to inquire about this?

A No, sir.

Q Did anyone at your firm ever visit the New York Stock Exchange to discuss this with any member of the New York Stock Exchange?

A Not to the best of my knowledge.

Q Did you ever send anyone from your firm to the New York Stock Exchange --

A No, sir.

Q (Continuing) -- for this purpose?

A No, sir.

Q Did you ever call -- did you or anyone in your firm ever telephone the Exchange to get a ruling on this?

A No, sir.

Q Now, at any time have you ever had any discussions with anyone, from 1967 through 1969, have you ever had any discussions with anyone at the New York Stock Exchange with respect to charging less than the minimum New York Stock Exchange commission on over-the-counter give-ups --

A No.

Q (Continuing) -- I mean, over-the-counter transactions?

A Yes, sir.

Q When did these take place in time, before or after 1967?

A After.

Q And when after 1967?

A The discussion which I recall as having or participating in regarded the advertisement that my firm ran offering to execute over-the-counter orders for institutions at six cents a share.

Q When did this take place?

A In 1969.

Q Was this the first time that you had been to the New York Stock Exchange with respect to problems in over-the-counter transactions?

A This was my first personal involvement in a conversation.

Q All right.

Now, who was at this meeting?

A This was on the telephone.

Q On the telephone?

A Yes, and I have the -- I recall that it was a Jim Swartz with whom discussions were held.

Q Can you tell us what the substance of your discussion with the New York Stock Exchange -- with Mr. Swartz at this time was?

A They were concerned with the fact that Arthur Lipper Corporation may not have been covering its costs or earning a profit on over-the-counter transactions at a six cents per share charge.

Q Was the New York Stock Exchange doubting that you could do this at six cents per share?

A Yes, sir.

Q And did they ask you to prove to them whether you were meeting your cost?

A Yes, sir.

Q And was there any discussion about having to make a slight profit also on a transaction?

A By implication, if one covers one's cost, one makes a profit.

It was not proposed that a precise break-even point be achieved.

Q But the fact of some profit was the substance of your discussion?

A That's correct.

Q Now, when in 1969 did this take place, in the summer, the fall?

A No, the spring, sir.

Q The spring of '69?

A Early spring, late winter.

Q This was after you had run your ad in the newspaper?

A After they had approved the ad and we had run it, yes, sir.

Q The New York Stock Exchange had approved the ad?

A Yes, sir.

Q Who at the New York Stock Exchange approved that ad?

A I don't know the individual's name. It's the normal department which approves member firm advertising.

Q And did you submit the ad for their approval yourself personally or someone connected with your firm?

A Someone connected with the firm did.

Q Do you know to whom -- I will withdraw that.

Now, during this period of time was there any discussion, or were you told by anyone at the New York Stock Exchange that you could not execute over-the-counter transactions at less than the New York Stock Exchange minimum commission?

A By someone at the Exchange?

Q Yes.

A No, sir.

Q At any time since 1966 or -- yes -- through 1970 has anyone at the New York Stock Exchange ever told you that you could not execute over-the-counter transactions at less than the New York Stock Exchange minimum commission?

A No, sir.

Q And the only conversations you had on this line were with Mr. Conwell?

A No, sir. That's not the case.

Q You had other conversations with respect to not being able to charge less than the New York Stock Exchange minimum commission on over-the-counter transactions with others than Mr. Conwell?

A As far back as 1966 or '65 I believe I requested

Goodbody & Company -- I am sorry -- Zuckerman Smith & Company to ascertain whether or not the Exchange would permit the charging of a zero commission on over-the-counter transactions for institutions as a means of inducing listed business.

Q And what were you told?

A I was told by the partner of Zuckerman Smith that this would not be permissible.

Q Were you given a reason why it would not be permissible?

A Because it would be considered rebative.

Q And at the time you were discussing a zero commission; is that correct?

A That is correct, sir.

Q Outside of the discussion with the partners of Zuckerman Smith, and Mr. Conwell, have you had any other discussions during this period with anyone else with respect to charging less than a minimum New York Stock Exchange commission on over-the-counter transactions?

A Yes, sir.

Q Who were some of these other persons with whom you have had these discussions?

A Other associates or partners of Wilkie, Farr.

Q And who were they?

A Mr. Raymond Merrit, and our general counsel, Mr. Klotz.

transmittal letters, and I also double checked it against the checks, but the figures shown on here wouldn't all represent the checks themselves.

There would be a gross figure at the bottom of the transmittal letter which would represent the total commissions given up for various numbers of accounts.

MR. LA PRADE: I see.

MR. KLOTZ: So, a single check would represent, perhaps, a payment made on give-ups for several accounts?

MR. DUDLEY: But --

MR. LA PRADE: Can we go off the record?

HEARING EXAMINER BLAIR: Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

On Division's Exhibit 82 for identification the last captioned shown on Line 32 should, in fact, read: Grand Total; IET and Regent and FOV Prop. Funds, $1,450,517.32; is that correct?

THE WITNESS: That's right.

BY MR. LA PRADE:

Q The totals that appear on Exhibit 82 would represent these commissions that were earned on the various transactions --

A 83.

Q 83, I am sorry.

And 82 would be a composite of the commissions paid?

A Yes.

Q All right.

HEARING EXAMINER BLAIR: And so the record is clear, also the total found on Division's Exhibit 79-B is $1,275,517.31 is the same as the grand total on Division's Exhibit 82 for IIT and Regent and FCT Prop. Funds if one subtracts $175,000?

THE WITNESS: That's correct.

MR. LA PRADE: At this time I would move Division's Exhibits 82 and 83 be received in evidence.

MR. DUDLEY: No objection.

HEARING EXAMINER BLAIR: Division's Exhibits 82 and 83 are admitted.

(Whereupon, the documents previously marked for identification purposes as Division's Exhibits 82 and 83 were received in evidence, at this time.)

MR. LA PRADE: We have no further questions of this witness.

HEARING EXAMINER BLAIR: Mr. Dudley?

MR. DUDLEY: Yes.

BY MR. DUDLEY:

Q Mrs. Stuart, do you recall when Arthur Lipper Corporation began to clear its own transactions?

A On November 1st, 1967.

Q Do you recall whether this created any problem with respect to the net capital rule?

A Yes, it did. It created a significant problem in that --

Q Would you explain that, please, for the Hearing Examiner?

A With the paper backlog that existed in the Street at the time we found ourselves faced with a fail problem almost immediately, which created a capital problem for computation with the New York Stock Exchange rule.

Q What do you mean by a fail problem?

A We could not deliver to our customers and get paid for securities that they had purchased, and because the customer had not received securities from other brokers, they were not able to deliver back to us, and it created fails which created capital charges for 325 purposes.

(Continued on next page.)

HEARING EXAMINER BLAIR: In other words, sales to receive and sales to deliver accounts in your company, during 1967, were of such proportions that to cause a net capital problem?

THE WITNESS: Yes.

BY MR. DUDLEY:

Q Do you recall if anything what Arthur Lipper Corporation did to remedy the situation?

A We attempted to bring in some subordinated money, to help with our capital.

Q Was that finally accomplished?

A Yes, it was.

MR. DUDLEY: I have no further questions.

MR. LaPRADE: I have one question.

REDIRECT EXAMINATION

BY MR. LaPRADE:

Q How was this subordinated capital -- do you know the source of the subordinated capital that was brought in?

A Arthur Lipper's brother, A. Michael Lipper, contributed $500,000 on a subordinated basis.

Q Was it a contribution or was it a loan?

A It was a loan.

Q This was the loan with the Guiness, Mahon Bank?

A Right.

Q Do you know if anyone connected with IOS guaranteed

that loan?

A I believe IOS guaranteed the loan.

MR. LaPRADE: I have no further questions.

MR. DUDLEY: No further questions.

HEARING EXAMINER BLAIR: Thank you, Mrs. Stuart, you are excused.

(Witness excused.)

HEARING EXAMINER BLAIR: I understand, Mr. LaPrade, that completes your case in chief, with Mrs. Stuart?

MR. LaPRADE: Yes.

HEARING EXAMINER BLAIR: Very well. That's with respect to all respondents?

MR. LaPRADE: Yes.

MR. DUDLEY: We would expect to call Mr. Alan Conwell, who is scheduled to come in at 11:00 o'clock tomorrow morning.

HEARING EXAMINER BLAIR: Okay.

Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

At this time, there being nothing further this evening, we'll adjourn to reconvene at 10:30 o'clock A.M. on September 23, 1970.

(Whereupon, at 4:30 o'clock P.M. the hearing was adjourned to September 23, 1970, at 10:30 o'clock A.M.)

(Whereupon, at this time a short recess was taken.)

HEARING EXAMINER BLAIR: The hearing will come to order.

MR. DUDLEY: Respondents call Mr. Conwill to the stand.

Whereupon,

ALLAN CONWILL,

called as a witness, having been first duly sworn by Hearing Examiner Blair, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUDLEY:

Q Please state your fullname and address.

A Allan Franklin Conwill.

Home address is 481 Carlton Road, Wyckoff, New Jersey.

Q What is your occupation?

A I am a lawyer.

Q Where do you practice law?

A In New York City.

Q In what jurisdictions are you admitted to practice?

A The State of New York.

Q Are you a member -- a partner in a law firm?

A I am a partner in the law firm of Willkie Farr

& Gallagher, 1 Chase Manhattan Plaza, New York City.

Q How long have you been a partner with Willkie Farr, Mr. Conwill?

A Since January 1, 1956.

Q Prior to becoming a partner in that firm, what was your occupation?

A I was a lawyer associated with the same firm, since my graduation from law school in 1949.

Prior to that, I was a law student.

Prior to that, for three and a half years, I was in the United States Navy.

Q You were employed by the Securities and Exchange Commission, during this period, were you not?

A Yes, sir.

Q When was that?

A From June 15, 1961 through June 30, 1964.

Q Whatoffices did you hold with the Securities and Exchange Commission?

A For a very brief period, I was general counsel and for the balance of the time, director of the Division of Corporate Regulation.

Q Could you describe briefly, your responsibilities as director of the Division of Corporate Regulation?

A I had th staff responsibility for the administration of the investment company act of 1940, which I

would say occupied most of my time.

In addition, I had the staff responsibility for administration of the public utility holding company act of 1935, plus the overall staff supervision of the Commission's participation in reorganizations under Chapter X of the National Bankruptcy Act.

Q What is your present relationship; if any; to the respondent, Arthur Lipper Corporation?

A My law firm and myself, particularly, are outside counsel to the -- to Arthur Lipper Corporation.

Q How long has that relationship existed?

A Since either late in 1966 or early in 1967, when I was instrumental in the legal work involved in the formation of Arthur Lipper Corporation.

Q Do you have any other relationships with Arthur Lipper Corporation?

A I am trustee, one of the trustees of the Arthur Lipper Corporation pension trust, and one of the trustees of the Arthur Lipper Corporation profit-sharing plan for employees.

Q Do you hold any positions with any other respondents in this proceeding, or any parent or subsidiary of a respondent?

HEARING EXAMINER BLAIR: And I believe you'll have to ask first, are you aware of all the respondents in

this proceeding, and/or are you limiting it to Lipper Corporation?

MR. DUDLEY: No, I'm not, your Honor.

BY MR. DUDLEY:

Q Are you aware of all the respondents in this proceeding, Mr. Conwill?

A Yes, sir, in the consolidated proceeding.

Q You have described your relationships with Arthur Lipper Corporation.

Would you describe what relationships, if any, you have with any of the other respondents inthis proceeding?

A For Respondent IOS, Ltd., S.A., the predecessor of the corporation now known as IOS, Ltd., that is the abbreviation, Ltd., I am one of a number of lawyers and law firms who represents IOS.

I also represent extensively, most of the mutual funds which are managed through affiliated corporations with IOS, and I am a director of one -- of two of those mutual funds.

One being the Fund of Funds, Ltd., spelled out; another IOS Growth Fund, Ltd., and the other being a publically held management company which is a holding company of the various management companies which are affiliated with IOS. The name of the corporation being Investors Overseas Services Management, Limited, spelled out.

Q How long have you been a director of Fund of Funds?

A Since May 25, 1969.

Q When was Arthur Lipper Corporation organized?

A The preliminary work in connection with the organization, I would say, commenced at least in the discussion stage, late in 1966.

The definitive work, with respect to incorporating the corporation, acquiring its initial membership, or seat, on the New York Stock Exchange, membership in the National Association of Securities Dealers, Inc., associate membership on the American Stock Exchange, were early in 1967, with the opening business date, as I recall, being April 1, 1967.

Q In what capacity were you involved in the organization of Arthur Lipper Corporation?

A I think it's fair to say I was intimately involved in all phases of the organization, including the registration under the Securities Exchange Act, as a broker-dealer; the subsequent registration under the Investment Advisers Act, as an investment adviser; and the acquisition of the New York Stock Exchange member corporation status.

Q You were acting as counsel for Arthur Lipper Corporation in this capacity; is that right?

A Yes, sir.

Q Did your advice to Arthur Lipper Corporation, at or about the time of its organization, early 1967, relate to investment company brokerage practices?

A In part, yes, sir.

Q During the early part of 1967, while you were advising Arthur Lipper Corporation concerning the organization of that company, did you have occasion to have discussions with personnel of the New York Stock Exchange?

A Yes, sir.

Q With whom did you have discussions?

A I had a number of discussions on a number of occasions during that period, and I do not recall all of the persons I talked to, but they would haveincluded Mr. Harold Schiowitz.

Q Could you identify these individuals as you go along?

A I can identify some of them by title and office.

Mr. Schiowitz, I don't recall his title.

Mr. William Carr of the secretary's office, and his staff.

Mr. James Schwartz, I believe of the Department of Member Firms.

Mr. Robert Bishop, who, at least presently, and I think at that time, was vice president and director of the

Department of Member Firms.

Q What was the purpose of your having discussions with personnel of the New York Stock Exchange, at this time?

A Almost exclusively informative, in connection with the launching of the new proposed member firms to make sure that we were starting out properly, in accordance with all Exchange regulations, to the best of our ability, to make sure that we were not falling into any snares, of which I might have been unaware, and in general, to make sure that we were complying in all respects, and would have a launching of the new member firm under as favorable circumstances as possible.

Q Based upon these discussions, did you form an impression as to the rate of commission which was customarily charged by member firms of the New York Stock Exchange, when they executed transactions on an agency basis, in the over the counter market?

MR. LA PRADE: I'm going to object to that question. I think we shouldfirst find out what he was told, or what was told in these discussions.

HEARING EXAMINER BLAIR: Overruled.

You may answer.

THE WITNESS: Yes, sir.

BY MR. DUDLEY:

Q What was your impression?

A Very definite impression that the appropriate charge was the minimum New York -- was equivalent to the minimum New York Stock Exchange Commission rate on New York Stock Exchange listed securities.

Q Do you recall whether you were told this by any individual at the Exchange, in the course of these discussions that you had with them?

A Bearing in mind, Mr. Dudley, that this is some three and a half years ago, I nevertheless believe I have a fair recollection that this was told to me, probably by more than one person; and I'm confident it was told to me by Mr. Bishop.

Q Do you recall whether you had any specific discussions with the staff of the New York Stock Exchange, at this time -- this would be early in 1967 -- concerning the practice of giving up commissions by member firms in the over the counter market?

A Is your question do I recall?

Q Yes.

A Yes, I recall.

Q What do you recall, Mr. --

A No, sir.

Q How frequently were you discussing with Mr. Lipper the various legal aspects of forming Arthur Lipper Corporation, during the early part of 1967?

A Literally, ona daily basis, Mr. Dudley, and normally several times a day.

Q During the early part of 1967, were you ever specifically requested by Arthur Lipper, whether it was lawful and/or appropriate for Arthur Lipper Corporation to follow customer-directed giveup instructions, in respect to over the counter transactions, both generally and with respect to the IOS related funds?

A I'm sorry; may I have the question read back?

(Whereupon, the pending question was read back by the reporter.)

A Yes, sir.

And may I just make it clear for the record, when we refer to Arthur Lipper, we are referring to Arthur Lipper III, because there is an Arthur Lipper Jr., his father, who is also a member of the New York Stock Exchange, and I have never met Arthur Lipper Jr.

Q What was your advice to Mr. Lipper?

A Thatover the counter giveups, or giveups from commissions charged on over the counter transactions, were generally, and specifically with respect to funds managed by IOS, were entirely lawful.

Q At the time you gave Mr. Lipper this advice, were you aware of any adjudicated case which was inconsistent with your advice?

A On the basis of personal research, it is my belief that there was, at that time, no such adjudicated case.

Q At the time you gave this advice, were you aware of any rules of any Stock Exchange, which related to giveups in the over the counter market?

A There were no prohibitive rules, and in fact, to my knowledge, at that time, the practice was acknowledged, recognized and at least, tolerated by all of the United States Stock Exchanges that I knew about, including the New York Stock Exchange.

(Continued on the next page.)

Q At this time, were you aware of any rules of the National Association of Securities Dealers which related to over-the-counter give-ups?

A No prohibitive rules, sir.

Q Were you aware of any rules which in any way related to whether it was permissible to -- for a member of the NASD to share commissions in the over-the-counter market with other members?

A Yes, sir. Rule 25 of Article 3 of the Rules of Fair Practice.

Q Do you recall in what sense that rule was applicable?

A In a somewhat reverse sense, you might say. It provides generally that a member of the NASD is not permitted to deal with a non-member broker-dealer on any terms different than the terms and conditions with which he deals with the general public at large.

The effect being that he has to charge a non-member the same, and then it cites at least two illustrations of what is prohibited with respect to non-members, and from that, I think you, at least I, would make the clear inference that with members you can deal on a different basis, including the sharing of commissions.

Q Well, at the time you gave this advice, were you aware of any pronouncements of the Securities and Exchange

Commission, which related to give-up practices in the over-the-counter market?

A By "pronouncements," do you mean rules?

Q Rules of the Securities and Exchange Commission. Start with that.

A Although there was adequate rule-making authority, in my opinion, in the Securities and Exchange Act, the Investment Company Act of 1940, and the Investment Advisers Act of 1940, this was untouched, virgin territory, as far as the rule-making authority was concerned, at this time.

Q Were you aware of any Commission decision that adjudicated cases, which related to this over-the-counter give-up practices, during this -- going back, the early part of 1967?

A There were no cases, to the best of my knowledge, which stated, even indirectly, that an over-the-counter give-up was, per se, unlawful.

The only case, really, that I recall having a significant bearing on the subject, was a 1965 case entitled "In the Matter of Imperial Financial Services," where there was clear inter-positioning in transactions, many transactions on which commissions were charged in the over-the-counter market, but whereas it was set out factually in the Commission's opinion, the Commission's decision did not turn on those facts at all.

Q Were you aware of any studies of the SEC which related to over-the-counter give-ups?

HEARING EXAMINER BLAIR: Are you referring now to the Staff of the Commission?

MR. DUDLEY: Either the Commission or the Staff. If we could clarify the question in that regard.

A Yes, sir. As regards the Staff, the special study of securities markets which was a Staff study, which made recommendations to the Commission, many of which were adopted and implemented, and which was published in part in 1963 and in part in 1964, was critical of give-ups from over-the-counter transactions, without taking the position that they were, per se, unlawful, and the study was particularly critical of so-called inter-positioning, that is for the purpose of earning a commission, inter-positioning a broker between the person ordering the transaction and the person effecting the transaction, in order to reward that inter-positioned broker with compensation.

The Staff study was very critical of that practice.

Now, there was a later Staff letter, in July of 1966, from Irving Pollack, who was director of the Division of Trading and Markets, addressed to each of the national stock exchanges, and the NASD, in which Mr. Pollack made the categorical statement that, and without qualification, as I recall, that give-ups from over-the-counter transactions had long been

recognized as illegal and improper.

And the last thing, at this time I recall, was an actual Commission document in December of 1966, the title of which was "Public Policy Implications of Investment Company Growth," the so-called mutual fund study which, at least one point made the statement not quite as sweepingly as Mr. Pollack's letter had, but said in substance that give-ups from over-the-counter transactions, to a broker who exercised no necessary function in connection with the transaction, were long recognized as improper and unlawful. And that was a Commission study as distinguished from a Staff study.

HEARING EXAMINER BLAIR: Was that a release, Mr. Conwill?

THE WITNESS: A very elaborate release, Mr. Examiner. An actual book of perhaps 300 or more pages, of which was a comprehensive study of the investment company industry.

HEARING EXAMINER BLAIR: You are referring to Commission's reference to the give-up being inappropriate. I was referring specifically to the last reference you made to the Commission itself having issued a statement. Was that in the form of a release, investment company release?

THE WITNESS: No, sir. It was a portion of the -- this 300-odd page study. But the 300-odd page study was a Commission document, as distinguished from a Staff study, such as the special study of securities markets.

BY MR. DUDLEY:

Q Mr. Conwill, did you consider these statements of the SEC and all the Staff, as authoritatively binding upon the respondent, Arthur Lipper Corporation, with respect to the particular factual situation -- with the particular facts in his case?

A No, sir.

Q Why not?

A Well, in the first place, the first two so-called pronouncements, I believe you used the term, were from the Staff, as distinguished from the Commission itself. And whereas, for example, the Pollack letter addressed to the various stock exchanges, which contained the most sweeping of the statements, of which I am aware, whereas I have a very genuine respect and admiration for Mr. Pollack, I do not consider him as the final authority on this subject, particularly since in his letter, he went on to recognize the existence of the practice, and to urge self-regulatory bodies to unit in effect, to abolish the practice.

I regarded the Pollack letter more in the nature of a position paper, urging an action by exchanges, and more in the nature of an advocate, a very persuasive advocate, but an advocate, nevertheless, and therefore not entitled to the weight of law.

(Continued on following page.)

Q Would you describe your understanding of the views of the New York StockExchange concerning over the counter give-ups at the time you gave your advise to Arthur Lipper Corporation, early in 1967?

MR. LaFRADE: I am going to object to that question. I think it would be hearsayfor him to be transmitting the views of the New York Stock Exchange.

HEARING EXAMINER BLAIR: Let me hear the question.

(Whereupon, thepending question was read back by the Reporter.)

HEARING EXAMINER BLAIR: Overruled. He's asking for Mr. Conwill's understanding. It would not be taking it as evidence what the New York Stock Exchange said.

Youmay answer.

A Well, I believe I stated earlier that I did not ask the question of the Stock Exchange, Mr. Dudley, but it was certainly my understanding that the practice was least tolerated by the Exchange, and you willrecall that at the end of the day yesterday you handedme a document which was introduced, either for identificationor in evidence, by the staff, Ibelieve it was Division's Exhibit 78, which was a statement by Mr. Keith Funston, was then President of the New York Stock Exchange, which occurred at a much later date than my advise to Arthur Lipper Corporation, but I believe that you will find reference to this very give-up practice

that we are discussing, in that statement of Mr. Funston's. And not with a characterization that it is anyway unlawful. Perhaps with the suggestion that the member firms ought to do something about it.

Q Are you aware of the practices put into effect by the Arthur Lipper Corporation, IOS and IPC, subsequent to the time you gave the advise you described?

A Yes, sir.

Q Could you describe your understanding of those practices?

A Yes, sir.

Ihad -- I was aware of them, because they werein the process -- in the general posture of being developed at that time, althought the order of settlement of it -- the IOS proceeding did not, which Ibelieve has been introduced in evidence in this proceeding, did not come until May. But they were being developed.

The idea was that IOS was not to do technically what-- or otherwise, any activity subject to thejurisdiction of the Commission.

Consequently, if IOS or any of its affiliated funds, or any of its fund managers, were to order directly in the United States by communications of anynature, technically that would be doing a jurisdictional act, which would be contrary to the order as it was anticipated it would come out, and

which in fact did come out.

Therefore, the arrangement was made, and this is hearsay on my part because I didn't participate in it, but I understand, with the acquiescence of the staff of the Commission, that IOS would place its orders for the purchase or sale of securities with either a bonified foreign office of a United States broker-dealer, outside the United States, or with a foreign broker-dealer, and that broker-dealer in turn would cause the order to be transmitted for execution for someone in the United States.

Now, the practical way that that was worked out, was that IOS would place its orders with London and Dominon Trust Company, which is a British Merchant Bank, and/or broker-dealer; London and Dominon Trust Company would then relate the order toArthur Lipper Corporation, which maintained from London to New York, partly at its cost, and partly at the IOS costs, a direct telephonic communications line, as well as direct telex lines, so that the order would be transmitted in London to Arthur Lipper Corporation.

Arthur Lipper Corporation would -- Arthur Lipper London, Limited, the subsidiary, would transmit it to Arthur Lipper Corporation in New York and the order would be either executed by Arthur Lipper Corporation, or whoever else may have been designated, one of say, any, as many as 100 firms, who might have been designated..

This was all prior to the anti-give-up amendment to the New York Stock Exchange constitution on December 5, 1968.

The order would then be executed; Arthur Lipper Corporation in New York would be notified of the results of the execution, pricing, number of shares bought or sold. He would -- his company would then transmit that information back to his London subsidiary, who in turn would transmit it to London and Dominon Trust in London, who in turn would transmit the information on a directline to the particular IOS managed fund, in Gineva.

Now, that's a very long windedexplanation, I realize, but it's been my own experience, from visually observing the procedure, that it can be done in approximately the time it took me to answer your question.

Q At the time that you were advising Arthur Lipper Corporation, in the early part of 1967, were you a director of Fund of Funds at that time?

A Yes, sir.

Q Were you present at anymeeting at the Board of Directors of Fund of Funds, at which give-up practices engaged in by IOS, were discussed?

A Yes, sir.

Q Doyou recall when the first meeting of the Board of Directors -- at which meeting it was first discussed?

A Well, the practices were probably discussed, to the

best of my recollection, at the first meeting I attended, which would have been in Geneva, in May of 1965, that is reciprocal practices, give-up practices in general.

In terms of very specific recollection, I recall very vividly a very detailed discussion at the meeting of the Fund of Funds Board, held in Nassau, in late March of 1966, and I have a very good reason for that --

Q Excuse me, Mr. Conwill, that was before, of course, the Arthur Lipper Corporation started in business?

A Yes. But I understand your question to bewere the reciprocal and give-up practices discussed at Fund Boards.

Q Yes.

A And they certainly were. In great detail, particularly at that March meeting, and I would say at every meeting thereafter.

In February of 1966, the Securities and Exchange Commission had entered an order instituting broker-dealer proceedings against IOS and several other named respondents, and it was a rather lengthy order, and many pages of that order were devoted to a description of brokerage commissions which had been directed to Jesup & LaMont for the credit of a registered representative with Jesup & LaMont, one Gloria Martica Clapp, of Nassau, in the Bahammas.

It was rather elaborately described in the order, and

the subject had some rather inherent news value, I would say, and I don't say that invidously as to the staff of the Commission.

It was just fasinating that a woman in the Bahammas would receive, over a brief period of time, some 750,000 dollars, I believe was the figure in the order.

That was given wide spread publicity, and if you had Mrs. Clapp, as I had, you would readily understand why it had inherent newspaper value.

But, with all of the publicity, we would have had to have been deaf, dumb and blind directors not to have raised the question and discussed it extensively, particularly since theproceedings presumably was in part based on that, although no violations were alleged in respect of it.

But, they were discussed respectfully at that time, at which meeting I believe all directors were present, plus our outside counsel at that time, Mr. Milton Cohn.

They were discussed extensively in the Board meeting in Geneva in the summer of 1966; in the Board Meeting in Hong Kong in November of 1966; and it's been a general subject of discussion at every Fund of Funds Board meeting that I have attended.

Q During the course of the discussions at Board meetings, which -- well, were there any discussions of this practice after 1967, when Arthur Lipper Corporation was organized?

A Yes, sir.

I have to say now that Imissed several Board meetings, and therefore cannotsay what may or may not have been said there, because I had an accident at the end of March,1967, which incapacitated me, and didn't permit me to travel for a while, so that the next Board meeting I attended of the Fund of Funds was in Acapulo, in late March and early April of 1968.

Reciprocal practices, generally, were extensively discussed at that time, and I believe that alldirectors were present at that meeting, plus our then outside special SEC counsel, Mr. Robert Haft, and in particular, the transactions effected on behalf of Fund of Funds by Arthur Lipper Corporation, and give-up practices, were discussed.

(Continued on next page.)

Q During the discussion at the Board meeting, was there any mention --

HEARING EXAMINER BLAIR: Which Board meeting?

MR. DUDLEY: Any of the Board meetings that he's testified to this morning, during the period 1966-1967, if you attended any in 1967 and 1968.

THE WITNESS: I did in 1967, yes. Early.

BY MR. DUDLEY:

Q At any of these Board meetings, was there any discussion whether IOS should lower its management fee, since its 80 per cent owned subsidiary, IPC, was receiving give-up payments?

A No, sir.

The fact of the give-up payments to IPC, and earlier, through another affiliated NASD member, Investors Continental Services, were discussed.

There were no discussions that I recall with respect to reducing the management fee.

Q Would you identify that corporation that you just mentioned?

A The Investors Continental Services, Ltd., I believe, which was wholly owned by IOS, the parent company, and was a member of the National Association of Securities Dealers.

Its activities were mainly related to sales of

mutual funds in Hawaii, Puerto Rico, and on United States military bases abroad.

Part of the IOS settlement order required the disposition of Investors Continental Services.

Q What, if you can recall, were the net assets of Fund of Funds when you first became a director?

A Yes, I can recall, because I was startled at the amount.

At the time, in May of 1965, there were approximately $150 million.

Q Do you recall what they were in 1966 or at the end of 1966?

A At the end of 1966, I would estimate $400 million.

Q Do you recall at the end of 1967?

A In excess of $500 million.

I may be wrong on this, but the range certainly during my tenure of a director, if I may vary your question a little bit, was from 150 million when I started out, to as high as almost 700 million, at the end of 1969.

Q Who was the principal underwriter for the Fund of Funds?

A The principal underwriter was the, initially the parent company, IOS, Ltd., (S.A.). Later, and I am not sure of the timing when it changed, the principal underwriter was a wholly-owned subsidiary of IOS, the parent,

called Investors Overseas Services, Limited, which was a Bahamian corporation.

MR. DUDLEY: Can we go off the record?

HEARING EXAMINER BLAIR: Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

BY MR. DUDLEY:

Q What advice, if any, Mr. Conwill, did you give Arthur Lipper Corporation concerning commission charges on over-the-counter market transactions, withrespect to registered investment companies?

A My initial advice in 1967, in the early period, was that it was perfectly appropriate to give up from unrelated over-the-counter transactions, at the direction of registered investment companies.

I had reason to change that advice at a later date.

Q When did that occur?

A In early 1968, probably at the end of January or early February, 1968.

Q What did you advise Arthur Lipper Corporation at that time?

A At that time I advised him as, not as a matter of legality, but as a matter of prudence, to cease all over-the-counter give-ups on behalf of, or at the direction of

registered investment companies, and in fact, I even went further and suggested as a matter of prudence, that whereas he could continue to execute over-the-counter transactions for registered investment companies, I would advise him to make no charge, even though that might pose him some difficulties with the New York Stock Exchange.

Q What advice did you give at this time concerning foreign investment companies?

A I told him that he was required to make the full New York Stock Exchange minimum commission on over-the-counter transactions effected for foreign investment companies, specifically IOS managed investment companies, and that he could give up all or any part of the commissions earned on such transactions to the extent permissible, namely to an NASD member.

Q Do you recall what the basis for your distinction between foreign investment companies and registered investment companies was?

A Yes, sir.

I was still of the view, at that time, that over-the-counter give-ups, at the direction of registered investment companies, were lawful.

However, in January of 1968, two things occurred. One, the ISI, Insurance Securities, Inc. decision, was handed down by the Commission.

And the ISI case involved very extensively not over-the-counter give-ups, but over-the-counter commissions, and whereas the order by agreement of the parties provided that no findings of violation would be included in the order, it was plain to me as a lawyer, from the text of the order, that the Commission and the Staff were taking an extremely dim view of over-the-counter charges and give-ups, and indeed one Commissioner, I believe Commissioner Owens, dissented from the ISI opinion on the ground that they were not permitted to make findings of violation.

Now, he didn't say what findings he would have made, but to me that was a reading that we had better watch out, and therefore prudence would dictate that he not even make charges on behalf of registered investment companies.

The second item that also happened, I think in January of that year, and I, if I looked at the document in front of me, I could tell you this specifically, was the Commission release in connection with proposed rule 10b-10, the effect of which was to propose a rule to require that, to the extent there were any give-ups on behalf or at the direction of the registered investment company, the amount of those give-ups, or the equivalent had to go for the benefit of the registered investment company and its shareholders.

And in the course of the release, again the

over-the-counter give-up practice was criticized, although the proposed rule 10b-10 by its terms, acknowledged the widespread practice, and said that it was working within the framework of the existing give-up practices.

But, with those two things coming so quickly together, I advised Arthur Lipper that even though the Stock Exchange would not object, that it would be better to have a fight with the Stock Exchange rather than a possible fight at a later date with the Securities and Exchange Commission.

I did not have this proceeding in mind when I gave that advice.

Now, however, with respect to the other part of your question, on the foreign investment companies, by the terms of the Commission's own order, as I have already indicated, it was impossible for a manager of an IOS affiliated fund to order directly a security, including an over-the-counter security, from the United States.

It seemed to me that one of the theories of the Staff of the Commission was that, which with all due difference to the members of the Staff present, and they have a valid argument, but I disagree, that on an over-the-counter commission, anyone can get the same price from a market maker, therefore any charge that you make, if you can give up out of that charge, you have charged too much.

Now, I don't agree with that, but, in any event,

even if I had agreed with it, with respect to IOS managed funds, they couldn't approach a market maker directly anyway. They had to go through either the communications facilities created by Arthur Lipper Corporation, or a counterpart created by some other organization.

Therefore, Arthur Lipper Corporation was becoming an absolutely essential service in the over-the-counter market transactions for IOS managed funds.

Accordingly, it was entitled to charge, and if they did not charge, then I advised him he would have a real battle with the New York Stock Exchange on that subject.

Q At or about the time that give-ups were abolished, on December 5, 1968, did you have occasion to speak with personnel of the New York Stock Exchange concerning whether Arthur Lipper Corporation could make its communication network with IOS available to other brokers for execution?

A Yes, sir.

Q Who did you speak with at that time?

A I spoke with Mr. Robert Bishop, and one or more members of his staff.

I was accompanied at that conversation by Robert Haft. My function was to represent Arthur Lipper Corporation. Mr. Haft's function was to represent IOS.

The reason was that, and I can't pinpoint the precise date without going back to my diaries, which I could

do, in late October the proposed anti-give-up amendment to Article XV of the New York Stock Exchange Constitution, was published.

That concerned IOS and Arthur Lipper Corporation very much, because, read literally, that would prevent the Arthur Lipper communications facility from being used by IOS to place an order through Arthur Lipper to, we'll say, Goldman, Sachs, or any other brokers, and it was very important for IOS affiliated or managed funds to do, because they wanted to spread -- they had a great amount of brokerage, and incredibly large amount of brokerage, and they wanted to spread it around as many firms as they could, and in fact, before the December 5, 1968 anti-give-up amendment, they did, to, I suppose as many as 100 firms, a great many of them with regularity.

So Mr. Haft and I made an appointment and saw Mr. Bishop and his staff, with a view to establishing that if IOS, under the system I had used, from Geneva, wanted to place an order, hypothetically we'll use Goldman, Sachs, and in fact they did use Goldman, Sachs very often, that they could give the order for execution to London and Dominion, in London, which would give the order to Arthur Lipper at London Limited, in London, which would transmit it to Arthur Lipper Corporation in New York, which would transmit it immediately to Goldman, Sachs, and since we pointed out to

Mr. Bishop that we had no choice in this matter, that IOS had to use this system, if it expected to comply with the IOS order, we did not feel it was appropriate for the anti-give-up prohibition to in any way restrict the use for that purpose.

(Continued on next page.)

Q What did Mr. Bischop tellyou?

A Mr. Bischop advised us, unequivocally, that if, to usemy hypothetical, the communications or facilities we used to place an order with Goldman Sachs, Arthur Lipper Corporation would be required to charge the full New York Stock Exchange minimum commission on the transaction, and presumably Goldman Sachs would, too, and therefore, the IOS managed fund would pay a double commission.

His theory was that the hold otherwise would be a rebative practice.

Q Mr.Conwill, whatcharge does Arthur Lipper Corporation presently make on over the counter transactions?

A Six cents per share.

Q When was this practice initiated?

A After the anti-give-up prohibition.

You recall I mentioned that before I had advised him not to make any charge to registered investment companies on over the counter transactions.

The Stock Exchange, even -- either shortly before or shortly after the anti-give-up prohibition, indicated,in my opinion because of Arthur Lipper Corporation's failure to charge., althoughthat is frank speculation on my part, so and so advised me, that it was inappropriate to make no charge on over the counter transactions, because that would run counter to the anti-give-up prohibition, which was, in

terms of giving up anything of value at the direction of a customer, and in consideration of the receipt of listed business.

So that if you were doing this for registered investment companies free, why, the Stock Exchange position was that you were doing it in consideration of the receipt of listed business, and I would say that wasa pretty good position on the part of the Stock Exchange.

Their conclusion was, however, that you could not do it free, you had tomake a charge.

I believe the magic words were "sufficient to cover your costs".

We determined that six cents would be sufficient to cover the costs, caused an ad to be prepared to that effect, and cleared with the New York Stock Exchange, as is required by the Exchanges' Rules on alladvertising, and published.

Q Did you have discussions with personnel in the New York Stock Exchange concerning this six cents a share practice, charge of six cents a share?

A Immediately afterwards, because even though they had approved the ad, which rather plainly said that hereafter we would charge six cents, and I had put in the ad the magic words of the Stock Exchange, something to the effect that this was sufficient to cover our costs, when the ad was actually

published, the very day of publication, I am informed that the general counsel of Arthur Lipper Corporation, Mr.Howard Klotz received a call from Mr. Schwartz of the New York Stock Exchange, withdrawing approval of the ad, and telling him to cease and dissist.

I thereafter had conversations with Mr. Schwartz, and, to the effect of which was thatsix cents obviously could not cover the costs, and therefore we were violating the Stock Exchange directive.

Now, this would have been in March, I believe, of 1969.

I advised Arthur Lipper Corporation to continue the six cent charge, and we would demonstrate to the Stock Exchange that it was sufficinet to cover the corporation's costs.

Since that time, we have submitted many studies to the New York Stock Exchange in an effort to demonstrate six cents is sufficient to cover the cost. The Stock Exchange has not accepted our position, but we are at present still charging the six cents.

Q Did you have occasion to bring to the attention of the Securities and Exchange Commission the attitude of the New York Stock Exchange concerning the Arthur Lipper Corporation's practice of charging six cents a share?

A Yes.

Q What manner did you do that?

A By a letter to Solomen Freeman, the Director of the

the Division of Corporate Regulation, because I knew that certainly this was within the Mr. Freeman's area of interest.

I was rightfully or wrongfully, quite irritated at the Exchange, because it seemed to me that from the public interest point of view the idea was to charge as little as you could.

From the personal interest of Arthur Lipper Corporation, the less we charged, as long as it was good business, why, the better off we were, it seemed to me, in the industry, and Iwrote and outlined the entire factual situation to Mr. Freeman, and with copies to several other individuals on the staff and told them I would welcome any formal or informal expression of their views.

Q Have you received a response to that letter?

A No, sir.

MR. DUDLEY: I would like to have this letter marked as Lipper Exhibit D for identification.

(The document above-referred to as Lipper Exhibit D was marked for identification.)

Q Mr. Conwell, I have placed before you what has been marked Lipper Exhibit D, and ask you if that's the letter that you sent to Mr. Freeman?

A It is a copy thereof, yes.

MR. DUDLY: At this time I would like to move that

that letter be received in evidence.

MR. LaPRADE: No objection.

HEARING EXAMINER BLAIR: Lipper Exhibit D for identification being a letter dated March 31, 1969, addressed to Solomen Freeman, by the witness Mr. Conwill is admitted in evidence.

(The above mentioned document Lipper Exhibit D for identification was received in evidence.)

MR. DUDLEY: I have no further questions.

HEARING EXAMINER BLAIR: Would you prefer a brief recess?

THE WITNESS: Yes.

HEARING EXAMINER BLAIR: At this time we will recess for ten minutes, before cross examination.

(Whereupon, at this time a short recess was had.)

HEARING EXAMINER BLAIR: The hearing will come toorder.

You may proceed with cross examination, Mr. LaPrade.

CROSS EXAMINATION

BY MR. LaPRADE:

Q Mr. Conwill, you testified that you were the consel who aided Mr. Lipper in setting up his Arthur Lipper Corporation Broderage firm; is that correct?

A Yes, sir.

Q At the time you set up the Arthur Lipper Corporation brokerage firm, did you know that Mr. Lipper had an arrangement with IOS, whereby Mr. Lipper was to give up 50 percent

of the commissions received by him on transactions executed by -- for -- on behalf of the IOS affiliated funds?

A May I ask what time we are speaking of?

Q At the time -- prior to the commencement of Arthur Lipper Corporation doing business?

A I did not know he had such an arrangement prior to the time, as I recall.

Q When did you first learn that Mr. Lipper had such an arrangement with Mr. Cowett or with IOS?

A Well, I certainly assumed throughout that he would have such an arrangment. I suppose I knew it definitely sometime in April of 1967.

Q When Mr. Lipper commenced doing business?

A Yes.

Q At thattime, did you know the amount of commission that Mr. Lipper was required to return to give up at the direction of Mr. Cowett or IOS?

A. I knew in general terms he was requested to give up, yes, sir.

I wouldn't use the word required.

Q All right, what he was requested, right.

Did you know the percentage?

A 50 percent was my understanding.

Q You knewthis on April 1, 1967?

A I wouldn't like to beheld to close to that date.

Sometime in April, 1967 I would have known that.

Q Anytime in April you would have known that?

A Yes.

HEARING EXAMINER BLAIR: Not anytime, sometime.

MR. LaPRADE: Sometime, I'm sorry.

A I don't want to be overly responsive, Mr. LaPrade. I will only say that one basis for my knowledge is thathe asked how much he could give up on several occasions, prior to -- prior to April 1st, when he started business.

But I didn't know of any particular arrangements that he had.

Q All right.

He asked you prior to April 1st?

A The maximum that he could give up.

Q Right.

Did you furnish him with any figure?

A Yes, sir.

(Continued on next page.)

Q What was that figure?

A I told that as far as I knew, that there was no maximum figure that he was limited to.

That the range for giveups was all the way from 25 percent to, within my personal knowledge, as high as 75 percent.

Q Mr. Conwill, in 1966 did you know if there were any fixed minimum commission rates on agency transactions in the over the counter market?

A Fixed minimum commission rates?

Q Right. In the over the counter market, on agency transactions.

A No, sir.

Q How about in 1967?

A Yes, sir.

I knew that there were views with respect to fixed minimum rates.

Q What were those views?

A That the minimum Stock Exchange rate on listed securities was applied to over the counter transactions.

I knew that was the general practice, before that, but in terms of being told --

Q Who told you this, in 1967?

A To the best of my recollection, it was Mr. Bishop.

Q Mr. Bishop of the New York Stock Exchange?

A It could have been Mr. Schiowitz, but I'm quite sure it was Mr. Bishop.

He told me, by saying that if we charged anything other than the minimum rate, we would have to justify it, because from his point of view, and I do remember this conversation, ifyou had -- if you were required to make a given charge onexecuting a New York Stock Exchange listed security, it was presumably just as difficult to make an execution in the over the counter market, and therefore, the same charge was appropriate.

HEARING EXAMINER BLAIR: Well, in answering that question, Mr. Conwill, were you referring to the situation where you had a New York Stock Exchange member firm involved in OTC transactions?

THE WITNESS: Yes, sir.

HEARING EXAMINER BLAIR: Not to be considered as general practice by all OTC firms; is that correct?

THE WITNESS: That's an emminently proper correction, yes, sir.

With respect to member firms of the New York and other exchanges.

BY MR. LA PRADE:

Q Do you know of any fixed minimum commission rate in over the counter transactions?

HEARING EXAMINER BLAIR: By New York Stock Exchange firms?

Q By anyone executing in the over the counter market?

A With respect to member firms, the custom and practice, and what I understood to be a requirement on member firms.

Q Apart from that, was there any minimum commission rate on agency transactions in the over the counter market, for non-members?

A Only the rules of the NASD with respect to just an equitable principles of trade, as applied to their mark-ups.

HEARING EXAMINER BLAIR: Youreferred to just and equitable principles with respect to mark-ups.

THE WITNESS: Yes, sir.

HEARING EXAMINER BLAIR: Did that rule also relate to commissions to be charged in brokerage transactions?

THE WITNESS: I have always assumed so, Mr. Examiner, although I would be unable to cite to you the specific NASD rule on it.

BY MR. LA PRADE:

Q Well, doesn't the NASD rules, as to mark-ups, deal with principal transactions as opposed to agency transactions?

A Yes, sir.

Q How about on agency transactions; do you know of any rule, regulation of any exchange, or any body, governing body, which requires a minimum fixed commission rate on over the counter transactions executed on an agency basis?

A No, sir.

Q Are you aware of any rules or regulations by any regulatory body, which prohibits the negotiations of commissions charged in the over the counter market?

A No, sir.

If I may only qualify that by saying, and this would qualify my prior answer of Rule 25, with respect to your dealings with non-member broker-dealers, that you are required to deal with them on the same basis thatyou deal with the public at large.

Q Right.

But there's no fixed -- there's no fixed rate?

In other words, you can negotiate that, right?

A Yes, sir.

Q It's negotiable.

Were youaware of thisin 1967?

A Yes, sir.

Q In 1968?

A Yes, sir.

Q Now, you testified earlier that in 1967, some

time in 1967, you had meetings with certain members of the New York Stock Exchange, Mr. Bishop, Mr. Carr, Mr. Schiowitz, and otherpersons.

Now, can you tell us whether -- in what form these discussions took place? Were they telephone calls or face to face meetings?

A In many instances, there were face to face meetings.

In some instances, there were telephone calls.

Q Did you recall meeting with Mr. Bishop in 1967; is that correct?

A Yes, sir.

Q Canyoutell us what you specifically told Mr. Bishop, at that time, with respect to the problem of whether or not the Arthur Lipper Corporation could -- the commission that Arthur Lipper Corporation was required to charge, on over the counter transactions?

A At that point, Mr. La Prade, I wouldn't have told Mr. Bishop anything. I would have been asking him, and I asked him what the appropriate charge would be, the reason being that we were creating a new member firm which, whose application for membership still had to be passed upon by the Board of Governors, and I was inquiring with the view to getting the organization launched in as favorable terms as possible, and I wasn't really telling Mr. Bishop anything. I was

inquiring.

Q Right.

You inquired of Mr. Bishop the -- as to the -- I'll withdraw that.

Inyour discussions with Mr. Bishop, you asked him or inquired of him the range of the commission which should be charged in the over the counter market?

A Notthe range. I asked him what the appropriate charge would be for over the counter transactions executed by our newly created member firm.

Q Why were you going to the New York Stock Exchange to find out what rate Arthur Lipper Corporation could charge on the over the counter market?

A I wanted to make sure that we were not making any charge either too high, or more particularly, too low.

Q Does the New York Stock Exchange --

A Which would offend the New York Stock Exchange.

Q Does the New York Stock Exchange regulate the over the counter market?

A With respect to member firms and their transactions, in some respects, very definitely, yes, sir.

And at that time, they did, as well as now.

Q You're stating then that in 1966 and 1967, when you talked to Mr. Bishop, that it was your belief that the New York Stock Exchange had the power to regulate the

commissions charged in the over the counter market?

A By a member firm, yes, sir.

They had the power to make it very difficult for you, if you did not abide by their wishes.

Q Did Mr. Bishop supply you with an answer to your question on the over the counter commission --

A Yes, sir.

Q What commission did he tell you that would have to be charged?

A He thought the appropriate commissions, as I recall, was the minimum rate charged on New York Stock Exchange listed securities transactions.

I believe that the way it came out was, and this was not my demanding, or discussing, or arguing with Mr. Bishop, it was simply asking what we should do.

And I came away with the distinct opinion that if we charged anything other than the minimum commission rate, we would have to justify it or act at our peril, because the Stock Exchange was then, and even now, almost obsessed with the idea of a minimum commission rate generally, and preserving the minimum commission rate concept.

(Continued on the next page.)

HEARING EXAMINER BLAIR: Mr. Conwill, Mr. La Prade, however, is directing his questions to what Mr. Bishop told you, rather than the impression that you came away with.

THE WITNESS: I beg your pardon?

HEARING EXAMINER BLAIR: Can you give the substance of what Mr. Bishop said?

THE WITNESS: Yes, sir.

I believe that he said that something to the effect of why wouldn't it be the minimum commission rate on listed transactions. And if you charge anything other than the minimum commission rate on listed transactions, you would be in -- you would have the onus of having to justify it to the Exchange.

BY MR. LA PRADE:

Q Now, did Mr. Bishop, at these conversations, indicate to you that you could charge anything less than the minimum New York Stock Exchange commission?

A No, sir.

Q Did Mr. Bishop, during these conversations, indicate to you that you could charge a commission less than the New York Stock Exchange commission, as long as you were meeting your cost?

A In these conversations, no, sir.

Q Did anyone with the New York Stock Exchange, in any conversations in 1966 and 1967, that you had with these

persons, indicate to you that you could charge less than the minimum New York Stock Exchange commission, on over-the-counter transactions, so long as you met your cost?

A No, sir.

Q Did you ask that question of the New York Stock Exchange, during this period?

A No, sir.

HEARING EXAMINER BLAIR: I want it clear on the record, that your question is with the view that the New York Stock Exchange was not attempting to dictate OTC commissions, but was considering this matter in context of what it believed appropriate for a New York Stock Exchange member to do.

Is that the import of the question?

MR. LAPRADE: Yes, sir.

HEARING EXAMINER BLAIR: You understood it that way?

THE WITNESS: I so understood it, yes,sir.

HEARING EXAMINER BLAIR: All right.

BY MR. LA PRADE:

Q During this period of time, did you have any -- one more question.

Did you, in your discussions with Mr. Bishop, which took place after April, in 1967 --

A It would have been before April, sir.

Q Did you have any discussions with Mr. Bishop after

April, 1967?

A Not until the discussion I referred to, which I talked to Mr. Bishop and his staff, in late 1968, with respect to the use of the Arthur Lipper Corporation communications facilities.

Q Now, when you first learned that Arthur Lipper Corporation was giving up 50 per cent of their commission on over-the-counter transactions executed for IOS affiliated funds, did you communicate that fact to Mr. Bishop, to get his determination as to whether or not this was permissible, by a New York Stock Exchange member firm?

A No, sir.

Q Why not?

A There was no reason to.

Let me put it this way, Mr. La Prade: It frankly didn't occur to me, and, at this moment, I can think of no reason why I should have talked to Mr. Bishop about it, particularly since it had to be well known to Mr. Bishop, inasmuch as it was in a variety of publications, including Commission publications, that you could give up 75 per cent of your New York Stock Exchange commissions.

Now, if you can give up 75 per cent of your New York Stock Exchange commissions, I wouldn't think one would be concerned with giving up 50 per cent of an over-the-counter commission, that is someone, an officer of the New York Stock

Exchange.

But that is recognized, on my part, as a purely speculative answer.

Q But, your testimony was that you were interested in seeing that Arthur Lipper got off on the right foot, and would not get in any trouble, and that you believed, at this time, that the New York Stock Exchange exercised a real control of a member's over-the-counter business; is that correct?

A Yes, sir.

Q Didn't you feel that this 50 per cent give-up might in some way be deemed a rebate by the New York Stock Exchange?

A No, sir. No more than I would have considered a 50 per cent give-up of a New York Stock Exchange member being a --

Q Was IPC a member of the New York Stock Exchange?

A No, sir. It was a member of the NASD.

Q Well, did the New York Stock Exchange rules allow for one member to give up to the -- to a non-member, in listed transactions?

A There is no express rule on the subject that I know of, Mr. La Prade, but it is a recognized practice, and it is recognized by the New York Stock Exchange, as a practice, as you will see from page 6 of the Division's Exhibit 78.

Q So, in any event, you never communicated the fact

that Arthur Lipper Corporation was giving up 50 per cent of its over-the-counter transactions, executed on behalf of IOS affiliated funds, to IPC?

A Communicated to whom?

Q To the New York Stock Exchange.

A No.

(Continued on following page.)

Q Now, did you know -- well, did you make any inquiry of the NASD, at this period, with respect to over-the-counter commissions that had to be charged?

A I had comparable discussions with personnel of the NASD, to those that I had with the Stock Exchange. I do not recall asking the specific question of the NASD as to the appropriate commission on an over-the-counter transaction, on an agency basis, but I did have several discussions, for the same purpose of getting launched in accordance with the NASD rules of practice, on a favorable basis, as well.

Q Did you complain to the NASD that the New York Stock Exchange was making you charge a minimum New York Stock Exchange commission on over-the-counter transactions?

A No, sir.

Q Why not?

A I didn't know of any reason to complain. There was nothing to complain about, as far as I was concerned.

Q Well, did you -- were you --

A May I say this, Mr. La Prade. --

I don't think it is fair of me, if I did so, to characterize what Mr. Bishop told me as making us charge the minimum commission rate.

He indicated that would be the appropriate charge, and if we didn't make the charge, we would have to

justify it. But I don't recall Mr. Bishop twisting my arm, so to speak.

It was not that kind of a conversation.

Q Now, so your testimony is that Mr. Bishop did not require you or convey in no way the requirement that Arthur Lipper Corporation had to charge a minimum New York Stock Exchange commission?

A No, sir.

My testimony is that I believe that is what he told me was appropriate to charge.

When I say -- when you use the phrase he made us charge this rate, it implies that he was bringing some kind of pressure to bear on us, which is not the fact, and it also implies that I would have had some legal objection to making this give-up, when I considered the give-up perfectly lawful and appropriate.

Q I was only characterizing your testimony, earlier testimony, wherein you stated --

HEARING EXAMINER BLAIR: Well, I think at this time, any characterization can await the arguments in briefs.

However, I want to make certain that I understood you appreciated Mr. Bishop's position in the hierarcy of the New York Stock Exchange, and from the standpoint that he might believe something appropriate, it bore weight with you.

THE WITNESS: Yes, sir.

BY MR. LA PRADE:

Q Now, do you know the function of the NASD? Without elaborating, in general --

HEARING EXAMINER BLAIR: I'll take official notice of that.

Mr. Comwill, in his expertise, must be aware of it.

BY MR. LA PRADE:

Q Do you believe, or do you know, whether or not the NASD regulates the over-the-counter market?

A Yes, sir.

Q Wouldn't it have been prudent of you to have inquired of the NASD as to whether or not there was a minimum commission rate which should have been charged on over-the-counter transactions?

A Well, I knew Mr. LaPrade, that there was no rule as such, establishing a minimum commission rate, in the sense that Article XV of the New York Stock Exchange Constitution establishes definitively a minimum commission rate.

I also knew, from my experience, both as a practicing lawyer and as a Staff member of the Securities and Exchange Commission, what the customary practice in the industry was on charges for over-the-counter transactions on an agency basis.

And knowing that, I was not concerned about encountering any problems with the NASD.

Q Well, didn't you believe it was prudent of you to obtain any ruling from the NASD prior to your advising Mr. Lipper as to the rate he should charge?

A Well, evidently I didn't believe it was prudent, because I didn't.

Q Did you make any inquiry of the SEC of the -- whether or not there was a minimum rate?

A No, sir.

Q Why not?

A My grin is not intended to be in any respect disrespectful, Mr. Examiner.

Having been on the Staff of the SEC, Mr. LaPrade, I know what the answer of almost any Staff member of the Commission would be, if I asked what charge I should make, and whether or not I can make give-ups from the over-the-counter transactions.

Q Well, would you state what your belief was, what they would have told you, at this time?

A Yes, sir.

If I asked any member of the Staff with whose views I am familiar, including specifically the counsel representing me, I rather imagine that I would be told that you should charge as little as possible on an agency

transaction executed on the over-the-counter market.

That agency transactions are generally frowned upon, because particularly a mutual fund doesn't need a broker to go to a market maker to get a price, and that a give-up from an over-the-counter agency transaction is, per se, unlawful, because if you can give up at all, it indicates that you have charged too much.

I believe I would have gotten that response, pre-universally, from the Securities and Exchange Commission Staff.

Q Did you advise Mr. Lipper of the SEC's view, when you were advising Mr. Lipper as to the legality or propriety of his giving up a portion of his commission in the over-the-counter transactions?

A Yes.

Q You told Mr. Lipper the SEC frowned on it?

A Yes, sir.

Q Did you make any recommendation to Mr. Lipper at that time?

A At that time I didn't make any recommendation other than to proceed with the 50 per cent give-up he had in mind, because I also advised him that, in my opinion, the SEC Staff was wrong, as a matter of law.

Q You advised him of that?

A Yes.

Q You believed that they were wrong?

A Yes, sir.

HEARING EXAMINER BLAIR: Just to make it clear, since the use of the SEC frequently is used interchangeably in reference to the Staff and to the members of the Commission, were you advising Mr. Lipper with respect to the Commission as a Commission view, or Staff view?

THE WITNESS: I was advising him as to the Staff view. Without necessarily ruling out what a Commissioner's view might be.

HEARING EXAMINER BLAIR: Yes.

Off the record.

(Discussion off the record.)

BY MR. LA PRADE:

Q You have testified earlier that you didn't pay much attention to the Pollack letter, is that correct, which is Exhibit 47, Division's Exhibit 47?

A No, sir, I did not so testify.

I paid a great deal of attention to the Pollack letter, having a high regard for the views of Mr. Pollack.

I believe what I testified was that Mr. Pollack's statement was too broad, and that I did not think it accurately reflected the status of the law.

Q Didn't you also testify that it represented the Staff's view as opposed to the Commission's view?

A Yes.

Q Do you know whether or not this Pollack letter was read into the Congressional Record?

A Yes, sir.

The same month it was published, then Chairman Manuel F. Cohen submitted it to Congressman Harley Staggers, the Chairman of the House Committee on Interstate and Foreign Commerce.

My recollection of his letter of transmittal, was that he sent that along with a staff letter, relating to odd-lot transactions, and that Mr. -- the Chairman of the Commission, Mr. Cohen, did not say in his letter of transmittal that that accurately reflected necessarily the Commission's views.

In fact, I believe his letter of transmittal made it plain that this was a highly controversial, I believe he used that word, and difficult area.

(Continued on next page.)

Q But nevertheless he did refer the matter to the congressional record?

A He referred it to the congressional record in July, that would have been in 1966, and he referred to it, I think in the fall of 1967, in testimony before the same, or a subcommittee of the same committee, when he was asked by Congressman Moss, if the Commission had the power to force benefits from this type of give up to go to a fund, and the Chairman expressed doubts, as I recall that testimony.

Q Well, in any event, is there anything in the transmittal letter, to your recollection, or in Mr. Cohen's testimony, which cast anydoubts on the statement that giving up on over the counter commissions was illegal or long recognized as being illegal?

A In either the Chairman's letter or the --

Q Testimony that you referred to.

A It's a rather broad question, Mr.LaPrade, so perhaps I can be forgiven my making a broad answer? In the sense that I would certainly think there wasdoubt because upon a broad statement that this type of practice was improper and illegal, when the Commission never exercised what I would regard as ample rule making authority to deal with it and recognize the then existence of the practice, and even more than a year later recognized the continued existence of the practice to the extent that it based a proposed rule 10b-10

on that very practice.

Q Now, you testified tht you went back to the New York Stock Exchange at some point in time, with respect to the newspaper advertisement that wasrun in the papers, wherein Lipper was willing to execute over the counter transactions for customers at six cents a share; is thatcorrect?

A Yes,sir.

Q Now, at this time -- this point in time was when?

A This would have been March of 1969.

Q March of 1969.

Now, with whom at the New York Stock Exchange did you meet then?

A I did not go to the Exchange. I believe I handled the transaction by telephone, to Mr. James Schwartz, expressing considerable surprise that his reversal of an approval of the advertisement thathad been obtained by the general counsel of Arthur Lipper Corporation, Mr. Klotz.

Q Now, did you have any meetings with Mr. Bischop at this time, with respect to that ad?

A Not with respect to that ad, no, sir.

Q When was the next time you met with Mr. Bischop with respect to problems arising from Arthur Lipper Corporation, afteryour 1967 meetins?

A The next time would have been with Mr. Haft, when we discussed the communication facility, which would have

been late in1968.

Q Right.

And that's --

A Now, I have seen Mr. Bischop since then, but, to the best of my recollection, I did not on matters relating to Arthur Lipper Corporation.

Q Now, your testimony, and correct me if I am wrong, was that Mr.Bischop stated that you would -- if orders were placed through Arthur Lipper Corporation, to Goldman Sachs, there would have to be a double commission charged?

A Yes, sir.

Q Was there anything in the 1967 settlement order, which prevented IOS from placing orders with a market maker having offices outside -- branch offices outside the United States?

A No, sir.

Q Was thae in the 1967 settlement order, which would have prevented Lipper from dealing with a market maker?

A Arthur Lipper Corporation was in no way a party to the settlement order there.

Q Was there anything in the '67 order which would have prevented IOS from coming through Lipper and then having Lipper deal with a market maker?

A No, sir.

In fact, on over the counter transaction, I would

assume that's normally what happened. It was a matter of trading.

The order would come to Arthur Lipper, and he would negotiate with several market makers, in order to obtain the best execution.

Q Right.

Now, at the time you had -- Mr. Lipper was executing over the counter transactions for no commission, do you recall that period of time?

A Yes, sir.

Q Did you have any discussions with the New York Stock Exchange, with respect to Mr. Lipper charging no commissions?

A No, sir.

Q Did there come a time when Mr. Lipper ceased charging no commissions on over the counter transactions?

A Now we are talking in respect of registered companies, we are not talking about IOS managed funds?

Q Well, all I know is that, as I understand your testimony, there came a time when Mr. Lipper charged no commission on over the counter transactions; is thatcorrect?

A To registered investment companies.

Q To registered investment companies?

A That's right. Pursuant to my advise.

Q Why wouldhe not -- why would he charge a non-registered

investment company a full commission?

HEARING EXAMINER BLAIR: Mr. LaPrade, if you're asking Mr. Conwill to state his advise to Mr. Lipper, that's one thing.

But to speculate upon what Mr. Lipper might be thinking is quite another thing.

BY MR. LaPRADE:

Q Did you have any discussions with Mr. Lipper as to whether or not he should charge IOS six cents per share, for effecting over the counter transactions?

A Well, I think we are getting a little confusion into the record now. There was a period --

Q I mean no commission.

A Did I have discussions as to whether he should charge IOS no commissions?

Q Right.

A We did have discussions.

My advise was that he would not be permitted to charge IOS anything other than the full commission, at that time, because of the necessary service he was providing with his communications facilities.

That the Stock Exchange would very much frown on it, whereas -- and would have a reason to frown on it.

I also believed that the Stock Exchange would frown on his practice of charging no commissions to registered

investment companies, but in balancing the factors of the future of the corporation, I felt that we might make some points with the staff of the Securities and Exchange Commission, if we charged no commission to registered investment companies, and I would have preferred to do that and run the risk of having a fight on that subject with the New York Stock Exchange.

Q Well, did Mr.Lipper -- do you know whether Mr. Lipper ever stopped charging no commission on over the counter transactions, for investment companies, registered investment companies?

A Yes, sir.

Q At that time, did you complain to the Securities and Exchange Commission?

A He stopped making no charge when it was indicated by the New York Stock Exchange that you must at least make a charge sufficient to cover your cost.

At that point we went through the six cents per share episode, which is our present charge, and when the New York Stock Exhcange objected to our six cents per share, I then complained to the Securities and Exchange Commission, with the letter to Mr. Freeman, which has been introduced in evidence.

Q Right.

Now, at the time that you were charging six cents

per share, was there any discussion had between you and Mr. Lipper as to reducing the charge thatyou would, or the cost, that you would charge IOS?

A Yes, sir.

Q And what was the nature of that discussion?

A Well, that -- one happy result of that, under that interpretation by the New York Stock Exchange, was that if you were justified in -- if you had to charge an amount to be sufficient to cover your cost, then my interpretation of that was that you could apply that across the board, to any customer, including IOS managed funds, even though we had to use a communications facilities.

Therefore, I advised Mr. Lipper, without consulting the New York Stock Exchange on the subject, that he could also charge IOS managed funds on the basis of six cents per share.

(Continued on next page.)

Q Were you satisfied that 6 cents per share would cover Mr. Lipper's cost?

A Mr. La Prade, I am not an expert in determining brokeragehouse costs, so I wouldn't have any independent way of evaluating it.

On the other hand, this is what Mr. Lipper told me, what his chief financial officer told me, what his chief fimncial officer told me, Mr. Martin Tell, and I do have confidence in that, and was satisfied.

Q They represented to you the 6 cents per share would represent their cost of executing?

A Yes, sir.

Q Was there any representation that that might leave them with a small profit?

A I don't recall.

Q Well, in light of your discussions with the New York Stock Exchange, within, I think it was pointed out that one of the problems of charging less than cost to institutions executing transactions on the New York Stock Exchange was that it might be considered rebative in order to get their business; is that correct?

A Yes, sir.

Q Were you concerned when you were discussing that 6 cents per share cost, that it might be considered rebative, if Mr. Lipper were not making a slight profit?

A I don't recall, because I -- that I was concerned, Mr. La Prade, because I was using the express language of the New York Stock Exchange, when they said you must make a charge at least equal or sufficient to cover your cost.

So, using their language, I was happy to use their language quite literally.

Q Do you know whether or not, in your discussions with Mr. Lipper, that the profit would be an element of his cost figure?

A It may have been, Mr. La Prade. I simply don't remember.

I did examine each presentation of figures that went to the New York Stock Exchange, and there were rather elaborate presentations.

Now, whether Mr. Tell, who prepared those, included a factor for profit, I just don't know.

Q When did you --

A It does seem to me that the ultimate result was that we certainly weren't losing any, and we probably were making a little.

Q When did these discussions with Mr. Lipper take place, on the 6 cents per share charge?

A Probably in January of 1969, or February, because I believe that the general counsel of Arthur Lipper Corporation prepared and submitted the ad to the New York Stock Exchange

for approval, some time in February of 1969.

Q Would this be the same time period that it was decided that IOS funds would also be charged 6 cents per share?

A Yes, sir.

Q Now, you testified that you conducted some independent research prior to rendering your decision in 1967, to Mr. Lipper, that he would have to charge the minimum New York Stock Exchange commission on over-the-counter transactions?

A Yes, sir.

Q Did you consult with any members of your firm prior to rendering your opinion?

A I don't recall specifically, although I would be surprised if I didn't consult with at least one of my partners, for whom I have a high regard, as an expert in this area.

Q But you have no recollection --

A I have no specific recollection.

Q Now, you testified that you attended board of directors' meetings, except for a period of time in 1967 when you had your accident, and were not fully able to participate; is that correct?

A Wasn't able to participate at all. Yes, sir.

Q Now, do you recall being present at a board of directors' meeting in Alculpo, in February or March of 1968?

A April of 1968.

Q April of 1968?

A Yes.

I pin that date down because it happened to be at the time that Dr. Martin Luther King was assassinated. So it's vivid in my mind.

Q Do you know whether Mr. Lipper was present at that meeting?

A Yes, sir, he was.

(Continued on following page.)

Q Do you recall whether or not Mr. Lipper participated in the meeting?

A Yes, I recall.

Q Was this the meeting where Mr. Lipper discussed and informed the various members of the Board of Directors the manner in which he wasexecuting over the counter transactions for the various IOS affiliated funds?

A Well, I don't recall whether he did it at that meeting or not. It had been done many times before.

Actually, the general mechanics, since I was regarded by my co-directors as something of an expert in the field, many of the discussions in prior meetings had been by myself.

At this meeting Mr. Lipper may well have, or Mr. Haft may have. I probably did.

Q Well, do you recall wether these directors of Fund of Funds were specifically advised that Arthur Lipper Corporation was giving up 50 percent of their commissions on over the counter transactions executed for the portfolio of Fund of Funds, to IPC or to other brokers, at the direction of IOS?

A Yes, sir.

Q You --

A They were specifically advised.

Q Who specifically advised them of that fact?

HEARING EXAMINER BLAIR: You mean at the meeting?

Q At the meeting?

A Probably myself.

Q At the meeting wherein youreported the fact of the give-ups by Arthur Lipper --

HEARING EXAMINER BLAIR: The Acapulo meeting, since there are several meetings Mr. Conwill stated they had been advised?

Q At anyof these meetings wherein you advised the directors of Fund of Funds of the 50 percent give up by Arthur Lipper on transactions effected for the Fund of Funds portfolio, did you convey the views of the Securities and Exchange Commission on over the counter give-ups?

A Yes,sir.

Q What views didyou convey to them?

A Essentially the views that I related to you, when you asked me what I believed a staff member would have told me about over the counter give ups, Mr. LaPrade.

You see, the members of the Fund of Funds Board, as I indicated before were -- had this subject under nearly constant discussion, since the oroginal order instituting proceedings in 1966.

Now, of those members, of course some would know it automatically, becauseone was Mr. Cornfeld,who was a respondent in this proceeding; the other is Mr. Cowett, whds a respondent in this proceeding, who Iwould say is quite

well informed on the general subject matter.

In other words, Mr.Robert Nagler, who was President of the Fund of Funds for a period, and who had a background with Dryfus Corporation, and Equity Funding, so he was familiar with the generalarea.

Another director was Erik Duff Scott, a past President of the Toronto StockExchange, so one didn't have to draw pictures to him of this type of activity.

And the last one, as I recall, was Wilson W. Wyatt, a man with a very inquiring mind, who, when the proceedings were first instituted spent literally hours with me outside of Board meetings as I went through the various means of reciprocal practices and give-ups, and what was customary.

Q Now, were you asked for your views as to the Securities and Exchange Commission's position?

A Yes, sir.

Q Did you give your views?

A Yes, sir.

Q What were theseviews that you gave the Board of Directors?

A That the staff of the Securities and Exchange Commission waswrong, as a matter of law.

Q Now, --

MR. DUDLEY: Off the record.

HEARING EXAMINER BLAIR: Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: Back on the record.

BY MR.LaPRADE:

Q Did you at these meetings make clear thatover the counter commissions were subject tonegotiation?

A I had no specific recollection. My -- I believe I must have, however.

In explaining, as I did explain the theory of members, some members of the staff of the SEC.

Q Did you inform these directors that there were no rules as to minimun rates on over the counter transactions?

A Well, I would have informed them thatIOS --

Q Well, did you, that's the questions?

A I wouldn't have said that geerally. I would have informed them that the IOS managed funds, and particularly the fund for which we were responsible had no alternative but to pay the minimum commission of the New York Stock Exchange.

Q Did you advise them and -- what was the basis of your so advising them?

A Because Arthur Lipper Corporation, or anyone occupying the role of Arthur Lipper Corporation, maintaining a communications facility which had to be used in order for an execution to be made by our Fundof Funds, was performing a necessary function, and the Stock Exchange would not tolerate our charging, at that time, anything less then the minimum

commission.

The sole exception for that would have been what you referred to earlier, Mr. LaPrade, that if a portfolio manager in the Fund of Funds could have gone to a foreign branch office of the United States broker-dealer, who happened to be a market maker.

If that situation exists, that could have been done.

I don'tknow whether it ever existed.

Q Did you inform these directors at these meetings, that there were no rules with respect to minimum commissions or rates which were charged on the over the counter transactions?

A I informed them that theStock Exchange would require this charge to be made under our circumstances. I didn't get into any NASD Rules, because they were not relevant to our situation.

Q Did you inform them that there were no rules?

A No, sir.

No NASD Rules. I'll have to modify that. No NASD Rules.

Q Now, did you at the time of these Board of Directors meetings, inform these directors that Arthur Lipper Corporation was returning or giving up 50 percent of the commissions that he was receiving?

A Yes, sir.

Q You specifically toldthe Board of Directors that Arthur Lipper Corporation was giving up 50 percent of the commissions?

A Yes, sir.

Q Now, do you know if there were any minutes of those Board of Directors meetings?

A Yes, sir.

Q Do you have those minutes of the Board of Directors meetings?

A Yes, sir.

Q Do you have them here with you now?

A N , sir.

Q Could you get them for us?

A I could. The matter could not, I could tell you now, inasmuch as I have had occasiontc go over the minutes of the Acapulo meeting, in an entirely different contest, that it would not be referred to, because it's our office practice to put into the minutes of corporations we represent, only matters requiring foral decisional action, such as express resolutions.

So the minutes would reflect nothing on this subject. And specifically the Acapulo minutes do not, because I had occasion to reread them as late as last week.

Not in this context.

Q Would any of the minutes reflect theseconversations,

at the Board of Directors meetings?

A Doubtful.

Mr. LaPrade, as I say,my practice is to put as little in minutes as possible.

Q Now, at these directors meetings, did you ever inform the Board of Directors that under the Rules of the Board of Governors the New York Stock Exchange, it was permitted to adjust the investment advisory fees being paid by the fund, in accordance with commission business received?

A No, sir, I did not.

Q Now, at some point in time --

A You understand, they had no rules. But it would not have been contrary to the rules of the Stock Exchange todo what you said. That's entirely accurate.

They didn't have any express rule one way or another on the subject.

Butit could have been done, and I didnot infrm them that itcould have been done.

Q Now, did there come a time when you learned from Mr. Lipper that he was making a large amount of money from the business that he was receiving from IOS?

A Yes, sir.

Q When did that time occur?

A From practically the beginning of his business, early in 1967, it was quite apparent.

Now, I wasout of action from the end of April 1967, until, well, Mr. Lipper had visited me on occasions in the hospital.

I suppose I did get really active in his affairs, though, in terms of daily telephone conferences. until say January of 1968.

And certainly it wasquite apparent at that time, that he was making a tremendous amount of money, off the IOS brokerage.

(Continued on next page.)

Q Did you ever report this to the Fund of Funds Board of Directors?

A I don't recall. They knew how much, because reports were submitted to each meeting of the amount of brokerage, and it was an enormous amount generated by our fund.

Q But did they know the amount of profit that Mr. Lipper was making from these transactions?

A I don't think they would have had any way to know it, other than to surmise, with the rather astronomical figures, he must be making out rather well.

Q Now, at -- did you know the relationship of Investment Planning Corporation to IOS, in 1967?

A Yes, sir.

Q You knew that IOS had an 80 per cent interest in IPC?

A Yes, sir.

Q Now, do you know what services IPC was performing for IOS, in 1967?

A I know they knew-- knew of the relationship. I think I have to answer your question, no, because I never represented IPC.

They had another lawyer who was highly qualified, and I never had occasion to represent IPC.

Q You were familiar with -- you were a Director of

the Fund of Funds, is that correct?

A Yes, sir.

Q Did you represent IOS at this time?

A Yes, sir.

Q Now, do you know whether or not IPC was furnishing any investment advice to any IOS affiliated fund?

A I don't know.

Q Do you know if they were furnishing any investment advice to Fund of Funds?

A Well, only in the indirect sense that the Fund of Funds, for quite a long period of time, maintained a large position in shares of Fund of America, which was managed by Fund of America Management Company, a subsidiary of IPC.

We as directors were happy for quite a long period of time with that investment, and to that extent, we were getting the benefit of investment advice there, in relation to only the Fund of America.

I don't believe we would have had any advice with respect to other portions of the Fund of Funds portfolio.

Q Was IPC selling any shares of Fund of Funds?

HEARING EXAMINER BLAIR: When?

Q In 1967, '68 or --

A No, sir.

Q Were they selling shares of any other IOS

affiliated funds in 1967, '68 or '69?

A No, sir.

And the exception to that would be Fund of America, because Fund of America being affiliated with IPC, which was affiliated with IOS, why, they were selling Fund of America, and very heavily selling Fund of America.

Q But, under the terms of the 1967 settlement order, wasn't IOS under a directive to divest themselves of their interest in Fund of America, IPC?

A IPC, yes, sir.

Q Yes. Which controlled Fund of America; is that correct?

A Yes, sir.

It would have been, they were directed to divest themselves of IPC, and therefore the subsidiary Fund of America Management Company.

There was nothing which prevented their continued ownership of shares of Fund of America itself, in the Fund of Funds.

Q Now, do you know or did you ever learn that IPC paid some $250,000 to Fund of America in 1969?

A Could I have that question read back, please?

(Whereupon, the pending question was read back by the reporter.)

A No, sir.

Q Do you know -- withdrawn.

Do you have any knowledge of IPC having paid any, or returned any monies to Fund of America, in 1968 or '69 or 1970?

A I have no knowledge of any such payments, no.

Q Now, after the Commission instituted these proceedings, do you know if IPC ever returned any give-ups it had received from Fund of America?

A Returned --

Q To Fund of America?

A Returned to whom?

Q To Fund of America, any give-up of commissions it had received on Fund of America transactions?

A I don't know.

Q Now, the Commission instituted these proceedings in the fall of 1969, is that correct?

A September 23rd.

Q Now --

A I have reason to remember it.

Q Did you discuss these proceedings with any of your fellow directors on the Board of Directors of Fund of Funds?

A At great length, sir.

Q Can you tell us what, in summary form, what the substance of these discussions were?

A I explained at considerable length, the nature of the allegations with respect to IOS and each IOS respondent, and similarly, with respect to Arthur Lipper Corporation, and Arthur Lipper III, I would say I discussed it in considerable detail, and evaluated for the directors my opinion as to the merits of the proceeding.

Q Would you give us the opinion that you rendered to the Board of Directors of Fund of Funds?

MR. DUDLEY: I'd like to object, because I think now we are trying the proceedings, and I think Mr. Conwill's opinion is really irrelevant.

HEARING EXAMINER BLAIR: What purpose would be served in eliciting the opinion of Mr. Conwill, Mr. LaPrade? I have been rather liberal in allowing you to go into these details, but now that the objection is raised, I'd like you to state the relevancy of the line of questioning that you have engaged in.

MR. LA PRADE: I'll not pursue that. I'll withdraw that question.

BY MR. LA PRADE:

Q Do you still presently represent IOS?

A Yes, sir.

As I think I indicated before, I'm not their sole counsel. They have occasion to use a great many lawyers, and law firms, both in the United States and throughout the

world. But I represent them extensively.

Q Do you represent them in this proceeding?

A No, sir.

Q Now, with respect to the conversations that you had with the New York Stock Exchange, do you have any written memorandums, in your file, of those conversations?

A No, sir.

Q Do you know, as a member of the Board of Directors of Fund of Funds, whether or not that Fund has American shareholders?

HEARING EXAMINER BLAIR: At the present time?

Q In 1967?

A As a matter of personal knowledge, I can make a very informed statement.

I am not trying to be evasive, but I did represent IOS in various phases of their -- I don't know whether you want this on the record or not.

HEARING EXAMINER BLAIR: Continue.

A (Continuing) -- at various stages of their Commission proceedings, leading up to the settlement order of May, 1967, until I withdrew.

And in that connection, I caused, through my own staff, to put information together from the original files of IOS, as to the number of United States Citizen or Nationals who were shareholders of the Fund of Funds, because

that was quite germane, and in fact the Staff of the SEC had asked us for it.

I supervised the preparation of the IBM program that developed that information for us.

At that time -- now I'm speaking prior to the settlement order -- my recollection is that about six per cent of the total value in dollars of the Fund of Funds, was held by United States Citizens. Five to six per cent.

Now, under the terms of the settlement, one of the terms of the settlement order was that United States shareholders were required to be given the option either to rescind their FCF purchases, and be refunded all monies that they had spent, including sales load, or to shift into, without charge, any one of a designated list of United States mutual funds, and continue their contractual programs, if they had one, with that fund, or to retain their Fund of Funds investment.

My recollection is that probably about half of the United States Citizens exercised one of the options, either to get a refund, or to shift into an American fund, so that at the time you're speaking of, I would say that somewhere between two and three per cent of the Fund of Funds stockholders were United States citizens.

Q 1967-1968?

A As far as I know, that would prevail to date. I

have made no further inquiry.

Q How many persons would that two per cent figure represent?

A Well, we did it in terms of value, which was the normal way that we referred to it, in terms of dollar value.

If there are two per cent now, of the total number of shareholders of Fund of Funds who are United States Citizens, Naticnals, or residents, that would be approximately 3,000 people.

HEARING EXAMINER BLAIR: Would you believe that that's a fair estimate?

THE WITNESS: I would say that's a fair estimate, yes, sir.

Roughly 18 million shares outstanding, held by, I would say, 150,000 shareholder accounts.

MR. LA PRADE: I have no further questions.

HEARING EXAMINER BLAIR: Mr. Dudley?

MR. DUDLEY: I have no questions.

HEARING EXAMINER BLAIR: Thank you very much for coming in, Mr. Conwill.

THE WITNESS: Surely, Mr. Examiner.

(Witness excused.)

HEARING EXAMINER BLAIR: There being nothing further at this time, we will recess, to reconvene promptly at 2:30.

(Whereupon, at 1:30 o'clock P.M. a luncheon recess was had.)

AFTERNOON SESSION

2:40 o'clock P.M.

HEARING EXAMINERBLAIR: The hearing will come to order. Is the Division calling a witness at this time?

MR. LaPRADE: Yes, Mr. Bishop of the New York Stock Exchange.

HEARING EXAMINER BLAIR: Would you raise your right hand, sir?

Do you swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

MR. BISHOP: I do.

ROBERT BISHOP

called as a witness, being first duly sworn by the Hearing Examiner, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LaPRADE:

Q State your full name for the record, please?

A Robert M. Bishop.

Q Can you give us your address, business address?

A The New York Stock Exchange, Department of Member Firms, 4 New York Plaza, New York City.

Q Are you accompanied here today by counsel?

A Yes.

MR. LaPRADE: Would your counsel please identify himself

for the record, please?

MR. HARDIN: My name is Adli Hardin, Jr. I am associated with Milbank, Tweed, Hadley and McCloy. We represent the Exchange.

HEARING EXAMINER BLAIR: Thank you.

BY MR. LaPRADE:

Q Now, in what capacity are you employed by the New York Stock Exchange?

A Vice President in charge of the Department of Member firms.

Q Andhow long have you been a Vice President of the New York Stock Exchange?

A Since 1963 or '64.

Q How long have you been a member of the Department of Member Firms?

A Since 1960.

Q Now, wouldyou describe the functions previously of the -- briefly of the Department of Member Firms?

A The Exchanges charged with certain regulartory oversight of its member organizations, most of which is expressed in Exchange Rules and Constitution, and, of course, some of the 34 acts.

The Department of Member Firms is charged with carrying out this responsibility by the Exchange with a few exceptions, such as the review of advertising and market

letters, and the review of new members and allied members.

I think, otherwise, practically all the regulatory functions of the Exchange are in the Department of Member Firms, and the floor, the oversight of the part of the Member Firms, that are actually on the floor are under the Floor Department.

Q Now, do you know Mr. Allan Conwill of the firm of Wilkie Farr & Gallagher?

A Yes.

Q Do you know Mr. Arthur Lipper?

A Yes, although not well enough to be sure whether he is here today.

Q Right.

This is Arthur Lipper the third.

A The one who is President of or the head of Arthur Lipper --

Q Corporation?

A I know that his father also has a firm with the same name. The son we are talking about.

Q Right.

Now, do you recall having any discussion in 1966 -- 1967 with either Mr. Conwill or Mr. Lipper concerning the proprietary of a member firm charging less than a New York Stock Exchange -- a full New York Stock Exchange commission on over the counter transactions?

A No, I do not.

HEARING EXAMINER BLAIR: May I have the question read again?

(Whereupon, the last question and answer were read back by the Reporter.)

BY MR. LaPRADE:

Q Is it that you do not recall, whether in fact, you had a meeting or that you did not have a meeting?

A I do not recall that I had a meeting.

Q Well, do you usually keep records or a diary when you do -- when people do come to the New York Stock Exchange and meet with you?

A Yes, although I frequently have meetings that don't get into the diary.

If it's been arranged in advance it's usually in it.

Q Have you checked your diary before appearing here today to determine whether or not you had a meeting with Mr. Conwill in 1967?

A No.

Q You have not?

A No.

HEARING EXAMINER BLAIR: You say you did not check?

THE WITNESS: I did not check my diary.

HEARING EXAMINER BLAIR: Very well.

BYMR. LaPRADE:

Q Now, do you usaully, after having had meetings, pre-

pare memorandums of what wasdiscussed in a meeting?

A Ipersonally do not.

Q Well, if there are other people present at the meeting other than yourself, for instance, connected with the New York Stock Exchange, would they prepare memorandums?

A They frequently do. It's not a uniform practice.

Q Prior to appearing here today have you directed a search of the Division of Member Firms' files to determine whether or not any such memorandum of a meeting with Allan Conwill in 1967 exists?

A I did not direct such a search, but one of my associates did, and reports to me that we have no memoranda on such a meeting.

Q Now, would you state for the record the position of the New York Stock Exchange in 1967 with respect toMember Firms, the commission that Member Firms should charge in executing over the counter transactions forcustomers?

A We had no position on that subject.

The New York Stock Exchange minimum commissions applied to New York Stock Exchange trades, not over the counter trades.

Q To what extent does the New York Stock Exchange feel that it has the authority to establish rates in the over the counter market?

A We don't feel that we have any authority to establish

rates in the over the counter market.

Q Can the rates charged in the over the counter markets by member firms, be considered rebative practices?

A It's possible.

Q Then can you explain situations wherein it would be possible.

A The New York Stock Exchange constitution prohibits direct or indirect rebates on listed security transactions.

The most direct form of a rebate would be giving cash.

Now, I might elaborate and say that the word rebate here does not necessarily giving -- giving thepayments of some kind to the customer from whom you receive the order, rather, it extends to paying it to anyperson who is not either -- who is not registered with the firm or the firm itself.

Now, as I said, the most direct form would be making a payment to the customer himself.

The next level would be making a payment to someone not connected with the firm who is not registered.

The next level might be furnishing a services that was out of the ordinary line of entertainment to the customer or someone else with respect to business received, and among such kind of services could be the doing of over the counter trades at less than cost or the going rate, and through

that kind of reasoning you get around to the possibility of that there -- can be a connection of between rebating and over the counter transactions.

Q Now, let me give you a hypothetical.

If a Member Firm were executing listed business on the New York Stock Exchange for an institutional client, would the New York Stock Exchange require that said member charge a minimum stock exchange commission on over the counter transaction executed for that institutional client?

A No, we would not require that, but we would certainly expect the member firm to demonstrate to us, if they did it at less than the usual commission, to demonstrate that they were not doing it below cost.

In other words, that they weren't engaging in indirect rebating.

Q Was that your position in 1967?

A Yes.

Q Now, can you tell us whether that is still the position of the Exchange or was still the position of the Exchange in 1968 and '69?

A Yes.

Q It was?

A Yes.

(Continued on next page.)

Q , I show you what has been introduced in evidence in these proceedings as Division's Exhibit No. 70.

A Who's exhibit?

Q Division's Exhibit No. 70.

MR. KLOTZ: 78.

MR. LA PRADE: There is some confusion.

HEARING EXAMINER BLAIR: Off the record.

(Discussion off the record.)

HEARING EXAMINER BLAIR: On the record.

MR. LA PRADE: The document has been entered into as Divison's Exhibit 78.

BY MR. LA PRADE:

Q I show you Division's Exhibit 78, Mr. Bishop.

Do you recognize that document?

A Yes.

Q Can you explain the origin of the document, how it's prepared, and the function that it serves?

A I think I'd have to read some of it to be sure.

Q Well, generally --

A It appears to be the type of bulletin that's prepared from time to time to be circulated to the membership.

Q And it is circulated to the members?

A Yes.

Q How is it circulated?

HEARING EXAMINER BLAIR: Is there a particular

form of information contained in this type of bulletin in contrast with other publications?

THE WITNESS: Well, this was a less formal document than, say, a member firm's educational circular.

Most of these messages from the President are written in a popular style, just trying to communicate.

BY MR. LA PRADE:

Q How are they circulated to members?

A Oh, they go through our -- through the mail and through the Exchange's delivery system to New York firms.

Q Do you know whether or not this exhibit was mailed to the members?

A Well, I can't be sure.

From the looks of it, it probably was, but I really have to go back in the files to be sure.

Q Well, can you go back and check your files and submit to us in writing a letter to the effect whether or not it was mailed?

A Yes, sir.

MR. LA PRADE: At this point, Mr. Hearing Examiner, could we leave this portion of Mr. Bishop's testimony open so that when his letter is received we might mark it as Division's Exhibit No. 84?

HEARING EXAMINER BLAIR: Mr. Dudley?

MR. DUDLEY: Well, could we work out maybe some

stipulations that it was presumed to have been circulated, and that if Mr. Bishop finds out at a subsequent time something different, we can correct the record?

HEARING EXAMINER BLAIR: Yes.

Let me just ask you this:

The normal practice is, this bulletin would have been mailed in the ordinary course of New York Stock Exchange business to the member firms?

THE WITNESS: Yes, it would.

HEARING EXAMINER BLAIR: Very well.

Do you wish to stipulate, subject to Mr. Bishop's advising the Division of any inaccuracy therein, that this particular Division's Exhibit No. 78, being a periodic report dated February 1, 1967, was mailed in the ordinary course of the Exchange business to member firms?

MR. DUDLEY: Yes.

MR. LA PRADE: Yes.

HEARING EXAMINER BLAIR: Very well.

The stipulation is accepted.

The Division is entering into that stipulation?

MR. LA PRADE: Yes.

HEARING EXAMINER BLAIR: CVery well.

And, Mr. Bishop, would you be able, upon your return to your office, be able to check and advise the Division by a letter mailed today whether this particular bulletin was,

in fact, mailed?

THE WITNESS: While you have been having this exchange, I have looked at it superficially, and it looks familiar to me, familiar enough to me to state that it was mailed, unless you happen to have some proof copy, and I can't see any reason why you should.

MR. DUDLEY: One matter of clarification, especially since Arthur Lipper Corporation was not inexistence until April, 1967, I would like Mr. Bishop to be -- see whether he can say it was mailed at or about February 1, 1967.

HEARING EXAMINER BLAIR: Would that be the ordinary practice?

THE WITNESS: Yes, it would be.

MR. DUDLEY: Thank you.

HEARING EXAMINER BLAIR: Very well.

In view of that, are you willing to relieve Mr. Bishop of the request that you have made?

MR. LA PRADE: Yes, sir.

HEARING EXAMINER BLAIR: Very well.

Mr. Bishop, your testimony in that regard will be sufficient.

BY MR. LA PRADE:

Q Mr. Bishop, do you recall ever having told Arthur Lipper, Allan Conwill, or anyone in the law firm of Willkie, Farr & Gallagher, or, as a matter of fact, anyone during the

period of 1967 to 1969 that the minimum New York Stock Exchange Commission had to be charged by member firms on over-the-counter transactions?

A No. I do not so recall.

MR. LA PRADE: I have no further questions.

HEARING EXAMINER BLAIR: Mr. Dudley.

CROSS-EXAMINATION

BY MR. DUDLEY:

Q Mr. Bishop, I believe you have testified in answer to one of Mr. La Prade's questions that if a member of the New York Stock Exchange charged less than the New York Stock Exchange standard commission in the over-the-counter market, that this could be deemed rebative, a rebate; is that correct?

A It might be.

(Continued on following page.)

Q And I believe you put it in terms of less than the going rate or the usual commission.

Do you recall that?

A Perhaps I used that phrase, but I thought I said less than cost or the going rate; something of that nature.

The cost is the important part.

Q What would the going rate refer to, sir?

A Whatever the firm ordinarily charged on its over-the-counter trades.

Q Well, with respect to New York Stock Exchange members, is it not a fact that as a matter of practice agency transactions in the over-the-counter market by and large had the New York commission rate applied to them as far as the public concerned?

A That's my understanding.

HEARING EXAMINER BLAIR: New York Exchange commission rate.

MR. DUDLEY: New York Exchange commission rate.

Could I have one second?

HEARING EXAMINER BLAIR: Yes.

BY MR. DUDLEY:

Q Mr. Bishop, could I ask you to turn to Page 8 of the document which Mr. LaPrade handed you, which is Division's Exhibit 78?

A Yes.

Q Well, do you notice a chart on Page 8?

A Yes.

Q And would you note the block which says OTC market.

Would that refer to over-the-counter?

A Yes.

Q And could you explain -- are you familiar enough with this document to explain exactly what that diagram means?

A I think I'd have to read the paragraphs around it to see what it's referring to.

Q Well, without going into that, would this block tend to indicate that there were give-up checks paid over-the-counter -- in the over-the-counter market to NASD members, if you are able to refresh yourself at this time?

A Would you give me a minute or two to see what this is aying?

Q Certainly, sir.

A I notice on Page 6, near the bottom of the page, there is a paragraph that describes what's meant by this section of the chart.

Q All right.

Is that the paragraph beginning "A similar practice has arisen"?

A Yes.

MR. DUDLEY: Thank you very much, sir. I have no further questions.

MR. LA PRADE: Could I have a couple of minutes to confer?

HEARING EXAMINER BLAIR: Yes.

We will have a five-minute recess.

(Whereupon, a recess was taken at 3:00 o'clock P.M.)

(Whereupon, the hearing reconvened at 3:05 o'clock P. M.)

HEARING EXAMINER BLAIR: The hearing will come to order.

MR. LA PRADE: Could we have the last two questions, I think, before where Mr. Dudley posed the question to Mr. Bishop, wherein Mr. Bishop answered with respect to his understanding of the customary practices?

HEARING EXAMINER BLAIR: You mean the customary practice with respect to GTC commission charges?

MR. LA PRADE: Yes.

(Whereupon, the pertinent portion of the record was read back by the reporter.)

REDIRECT EXAMINATION

BY MR. LA PRADE:

Q Now, Mr. Bishop, is it a requirement of the

New York Stock Exchange that the minimum New York Stock Exchange be charged by member firms in executing over-the-counter transactions, even though the minimum Stock Exchange commission exceeds the cost of executing the transaction?

A No.

MR. LA PRADE: All right. No further questions.

HEARING EXAMINER BLAIR: Mr. Dudley?

MR. DUDLEY: No further questions.

HEARING EXAMINER BLAIR: Thank you very much for coming in, Mr. Bishop.

THE WITNESS: Thank you.

HEARING EXAMINER BLAIR: You are excused.

(Witness excused.)

MR. DUDLEY: That concludes our case.

MR. LA PRADE: That concludes our case, too.

HEARING EXAMINER BLAIR: You are finished with rebuttal?

MR. LA PRADE: Right.

HEARING EXAMINER BLAIR: Is there anything further?

MR. DUDLEY: I would like the Hearing Examiner to take official notice of the Securities Exchange Act Release No. 8239.

HEARING EXAMINER BLAIR: 8239?

MR. DUDLEY: Dated January 26, 1968.